S. Hrg. 101-496

RURAL AND INDIAN HOUSING PROVISIONS OF S. 566

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND URBAN AFFAIRS

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 566

TO AUTHORIZE A NEW CORPORATION TO SUPPORT STATE AND LOCAL STRATEGIES FOR ACHIEVING MORE AFFORDABLE HOUSING; TO INCREASE HOMEOWNERSHIP; AND FOR OTHER PURPOSES.

THE NATIONAL AFFORDABLE HOUSING ACT

JUNE 21, 1989

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE
23-346 WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S241-28.

23-346 O - 90 - 1

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CONTENTS

WEDNESDAY, JUNE 21, 1989

Page
Opening statement of Senator Cranston 1
Opening statement of Senator Sanford 68
Opening statement of Senator McCain 93
    Prepared statement 93

WITNESSES

William N. Martin, partner, Toto Development Co., Fallbrook, CA, on behalf of the Rural Buildings Council of California 3
    Housing opportunity partnership [HOP] 4
    Tax benefits reduced by the 1986 tax bill 5
    Prepared statement 6
        Recommendation re: 50 year prepayment-refinancing restriction on section 515 projects 10
Robert Marshall, executive director, Self Help Enterprises, Visalia, CA, on behalf of Rural Housing Coalition 12
    Need for assistance 12
    Permanent affordability 13
    Prepared statement 15
        Rural housing needs 16
        The National Affordable Housing Act 16
        Rural areas and the housing opportunity partnership 17
        Rural housing authorization levels 17
        Deferred mortgages 18
        Underserved areas 19
        Permanent affordability 19
        Indian housing 20
        Summary 21
Ernest Coleman, former rural committee chairman of the National Association of Home Builders, Washington, DC 22
    Extend rural housing programs for 2 years 22
    No residual value left after 50 years 23
Moises Loza, executive director, the Housing Assistance Council, Inc., Washington, DC 23
    Increase authorization levels by $200 million 24
    Need for building grant program 25
    Prepared statement 27
        The overwhelming need for more housing in rural America 28
        Retaining the low-income housing stock 29
        Expanding the present FmHA housing programs 30
        FmHA loans on Indian reservations 33
        Other rural housing initiatives 34
L. Earnest Beresh, executive director, Rural Housing Improvement, Inc., Winchendom, MA 36
    Concern of fair and equitable distribution of funds 36
    S. 566 has an escape hatch to allow reallocating unused money 37
    Prepared statement 39
        Housing opportunity partnership [HOP] 40
        Prepayment of FmHA section 515's 42
        Deferred payment loan program 42
        Set-aside for underserved rural areas 45
        Project preparation advance 45

L. Earnest Beresh, executive director, Rural Housing Improvement, Inc., Winchendom, MA—Continued
  Prepared statement—Continued .... Page
    Funding level authorizations for FmHA programs 47
    Concluding remarks 49
Thomas W. Honeycutt, tax credit specialist, the Weaver Co., Greensboro, NC, on behalf of the Council for Rural Housing and Development 50
  Make available funds for small communities 50
  Establish a guaranteed loan program 51
  Prepared statement 53
    The HOP program 53
    Low-income use restrictions 54
    Transfer of section 502 inventory for use under the section 515 program 57
Panel discussion:
  Incentives to avoid prepayment 59
  Negative amortization 62
Virginia Spencer, executive director, National American Indian Housing Council, Washington, DC 70
  Housing needs of American Indians and Alaskan Natives 70
  Prepared statement 73
    Additional comments 76
Ted Key, executive director, Chickasaw Nation Housing Authority, Ada, OK, on behalf of Oklahoma Indian Housing Association 78
  Federal budget excludes Indian housing funds 78
  Prepared statement 80
Ron Jones, executive director, Sisseton-Wahpeton Housing Authority, Agency Village, SD 83
  Recommended amendment 83
  Prepared statement 85
    Additional changes to the HUD Indian housing programs 87
Panel discussion:
  Benefits of the Indian Housing Act of 1988 91
  HIP program grossly underfunded 97

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Statements of:
  Hopi Tribal Housing Authority 98
  Mississippi Band of Choctaw Indians 100
  National Housing Law project 102
  The Navajo Nation 119

RURAL AND INDIAN HOUSING PROVISIONS OF S. 566

WEDNESDAY, JUNE 21, 1989

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
Washington, DC.

The Subcommittee met at 10:05 a.m., pursuant to notice, in room SD-538, Dirksen Senate Office Building, Senator Alan Cranston (chairman of the subcommittee) presiding.

Present: Senators Cranston, Sanford, and McCain.

OPENING STATEMENT OF SENATOR CRANSTON

Senator CRANSTON. The hearing will please come to order.

I welcome all of you.

Today we are continuing the Housing Subcommittee's series of hearings on S. 566, the National Affordable Housing Act.

This morning's hearing will focus on rural and Indian housing. Both of these issues are very important to me as a Senator from California. My own State is the largest user of Farmers Home housing programs and is home to more Native Americans than any other State.

There is a clear need for Federal action to provide decent affordable housing in rural areas of the country. Some 7.2 million families who live in rural areas and small towns have serious housing problems. Almost half of those families live in substandard housing, often without heating or indoor plumbing. Substandard housing is twice as common in rural areas as it is in urban areas.

The needs of rural America were among my central concerns as I worked to develop the National Affordable Housing Act. One of the earliest steps in shaping the bill was the decision not to propose major departures from the basic housing programs of the Farmers Home Administration. I know firsthand that these programs are badly needed, they work well, and they should be continued.

For those reasons, the National Affordable Housing Act unequivocally reaffirms the Nation's commitment to decent and affordable rural housing.

The bill will extend authority for low-income housing assistance under Farmers Home. Now some have criticized the Cranston-D'Amato bill for not having provided even higher authorization levels. And I agree. The proposed funding levels are not adequate.

I believe that more funding for rural housing is urgently needed, just as more funding should be provided for every one of the other urgent housing needs addressed in the Cranston-D'Amato bill.

However, several months ago as we were drafting the bill, we heard from numerous Senators that we had to be very careful about funding levels if we were to get the broad, bipartisan support the bill needs for enactment.

After extensive discussion with the Budget and Appropriations Committees, we included funding levels for rural housing that were considered quite optimistic but still realistic.

After the bill was introduced, the Budget Committee agreed to accommodate higher levels of funding. I am confident the Cranston-D'Amato bill will include those increases when it emerges from Committee. And I will continue to seek higher authorizations for rural housing.

Members of the Housing Subcommittee are as determined as anyone to make sure that a new housing policy takes full account of housing needs in rural areas. No one is more committed to this than I am.

The Cranston-D'Amato bill provides increased support for rural housing in a number of ways. It provides new incentives to expand assistance to very needy areas that have been underserved in the past. More than 200 non-metropolitan counties in this country have poverty rates higher than 20 percent and substandard housing rates above 10 percent. The bill will target assistance to those underserved areas.

The bill also authorizes a new deferred payment mortgage program designed to help very-low-income families afford to own their own homes. Home ownership has proven to be most appropriate for many low-income rural residents.

The bill will expand the supply of affordable housing in rural areas with assistance through the important new HOME Corporation which will be established at HUD. Half of the HOME Corporation's $3 billion in funding will be distributed directly to the States. And, the States will be responsible for using a major share of those funds in rural areas. Refinements will be made in the legislation to ensure that the housing needs of rural areas will be given the recognition that they deserve.

The bill provides low-income rental assistance through rental credits, which will combine the best features of the current voucher and certificate programs. This assistance will be distributed to States with a formula that takes into account the need in rural areas.

An important issue which will be addressed as the bill moves through Congress is the long-term affordability of section 515 multifamily housing projects. Owners of this housing can move to prepay their mortgages after 20 years of the 50-year mortgage term.

I'm looking forward to hearing the first panel's recommendations on how we can do more to preserve the long-term affordability of these projects.

Today's second panel will discuss Indian housing needs. I am keenly aware that far too many Native Americans are poorly housed. The amount of substandard housing on Indian reservations is appalling. This subcommittee in cooperation with the Select Committee on Indian Affairs is committed to continuing efforts to improve Indian housing.

The Indian Housing Act of 1988 made major changes in these programs just last year. And, the National Affordable Housing Act contains a reauthorization of those programs.

I am delighted that we have a very excellent group of witnesses this morning. As you can see, if you look at the agenda, we have a very full schedule. So I ask each of you to summarize your testimony within 5 minutes so we will have sufficient time for questions.

I want to give a special thanks to Bob Marshall and Bill Martin from my home State. Bob and Bill are leading experts in their field, and I very much look forward to their testimony as well as the testimony of all of you.

Why don't we start now with you, Mr. Martin. Would you please identify yourself, and would each of the other witnesses do so as we move down the table.

Again, let me remind you of the 5-minute rule, and those lights will tell you when your 5 minutes are up.

Mr. MARTIN. I could use one of those at home.

STATEMENT OF WILLIAM R. MARTIN, PARTNER, TORO DEVELOPMENT CO., FALLBROOK, CA, REPRESENTING THE RURAL BUILDINGS COUNSEL OF CALIFORNIA

Mr. MARTIN. Mr. Chairman, I am William R. Martin, and I am President of the Rural Builders Council in California on whose behalf I appear today. I am accompanied by Nooley Reinheardt who represents our Council in Washington.

Your many friends in the California Rural Builders send their regards and best wishes, Mr. Chairman.

In the way of background, I am a partner in Toro Development Company in Fallbrook, CA and we are active in the Farmers Home Administration section 515 program and other real estate development.

I would like to briefly discuss the Farmers Home Administration Housing program in California, and then relate that to several provisions in S. 565. California could legitimately and prudently use at least 50 percent more money for the development of rural housing than it receives in any given year.

But, Mr. Chairman, we would like to thank you for acknowledging this morning the funding authority levels needed to be increased in S. 565 for rural areas because we were going to make a comment to that, and we really appreciate the fact that you acknowledge that.

California, by the way, uses and needs more than its formula share of funds for all housing programs, including the section 502 single-family, very-low-income category. Through May 31, of this fiscal year, California had already obligated 106 percent of its initial allocation for the very-low-income borrowers. The deferred repayment provision in S. 565 would not normally be triggered in California.

We do not know if any California counties or communities could be potentially targeted under this section on housing in underserved areas. Generally such areas would receive high priority under current Farmers Home procedures.

It would seem to us that three factors could account for the lack of housing development in the areas S. 565 targets. The first would be the lack of adequate infrastructure to support the development. The second is more basic. It simply may not make economic sense to build a very few single or multifamily units in these places. And, No. 3, we feel there would be some community resistance.

We are pleased to note that the Senate bill would make for profit entities eligible for transfer to section 502 inventoried properties to the section 515 program.

HOUSING OPPORTUNITY PARTNERSHIPS [HOP]

You ask us to common on one other section of Cranston-D'Amato bill, the Housing Opportunity Partnerships under the HOME Corporation. We believe that the concept of Federal-State-local-private partnerships is good public policy.

The HOP program will never take the place of Farmers Home funded programs in rural areas, but it certainly would complement those programs in communities that have the ability, expertise and infrastructure and resources to take advantage of the opportunity. We certainly endorse your intent to expand the supply of affordable housing in the rural areas through HOME Corporation initiative.

It is most significant, we believe, that title VIII of the National Affordable Housing Act continues the low-income housing tax credit program. There is an ongoing debate over whether it is more desirable to address the nation's housing needs through housing policy and direct funding or through the tax code. We don't think this needs to be or should be an either/or situation.

Housing and tax policy have become intertwined. Each depends on the other for the successful development of the Farmers Home rental housing projects. We need both the programs you authorize to provide tenant subsidies, i.e., 1 percent interest rate loans for 50 years and rental assistance, and the tax incentives to attract developers and investors.

This delicate combination of housing and tax policy that has proven so effective in ensuring the continued successful development of rural rental housing would be badly altered by a provision in H.R. 1180, the pending version the House bill. Section 504 of H.R. 1180 would prohibit the refinance of prepayment of section 515 loans for the life of the mortgage.

We endorse the intent of this provision, which is to keep the rental units in the low income inventory for as long as possible. And I really feel, Mr. Chairman, that that is a real attitude change that I see with rural developers. They are now looking at these projects to last for the lifetime of the project.

The unintended effect is that the rate of return to the investor would be cut almost 50 percent, making section 515 projects a marginal investment alternative. This effect removes the incentive to develop section 515 projects.

TAX BENEFITS REDUCED BY THE 1986 TAX BILL

The tax benefits, though substantially reduced by the 1986 tax bill, are significantly more important than the potential for a builder's or management profit or the elusive 8 percent return on investment. For example, in California and elsewhere even if a project generates the 8 percent return, that will just about cover the cost of preparing the project and partnership tax returns.

If the House and Senate agree that the lock-in period is to be extended beyond the 20-year period in current law, some approach must be adopted to mitigate the effects of that action. Otherwise, section 515 projects will no longer be attractive or competitive investment alternatives and development will be significant curtailed.

Attached to this testimony is the proposal that we offered in response to the provisions in the housing bill.

In summary, we sought a method that would return most investor equity after 15 years with a minimal effect on tenant rents and without using new construction funds as in the case with the rural prepayment provisions in the 1987 housing bill.

We accomplished this with a FHA guarantee of a conventional loan for the equity amount and the reamortization of the remaining Farmers Home mortgage balance after 15 years. We also provided an incentive for the development of some projects that would not or could not be built under the current tax law.

We will be pleased to answer any questions, review the details of this proposal or to provide any additional information or documentation you may require today or in the future.

Thank you again for inviting us today, Mr. Chairman.

Senator CRANSTON. Thank you very, very much.

[The prepared statement of William Martin follows:]

STATEMENT OF WILLIAM R. MARTIN
PRESIDENT, RURAL BUILDERS COUNCIL
OF CALIFORNIA

BEFORE THE SUBCOMMITTEE ON HOUSING
AND URBAN AFFAIRS
of the

SENATE BANKING, HOUSING & URBAN
AFFAIRS COMMITTEE

JUNE 21, 1989

MR. CHAIRMAN:

I am William R. Martin and I am president of the Rural Builders Council of California on whose behalf I appear today. I am accompanied by Nooley R. Reinheardt who represents our Council in Washington.

Your many friends in the California Rural Builders send their regards and best wishes, Mr. Chairman. They also join me in thanking you for the opportunity to appear today and for all that you, Senator D'Amato and this committee have done to focus national attention on housing policy in this country.

In the way of background, I am a partner in Toro Development Co. in Fallbrook, California. We are active in the Farmers Home Administration Section 515 program, in state sponsored low income housing initiatives and other real estate development.

I would like to briefly discuss the Farmers Home Administration housing progrms in California and then relate that to several provisions in S. 565. California could legitimately and prudently use at least 50% more money for the development of rural housing than it receives in any given year. And that is after using the initial allocation, accessing the National Office reserve funds and competing for pooled monies not used by other states.

The National Affordable Housing Act would increase funding levels for rural housing programs, but not to the levels contemplated in the Budget resolution or proposed in the House housing bill. We would urge the Committee to take advantage of the opportunity that seems to be available this year to begin reversing the neglect of housing needs by increasing spending authorizations beyond what is contained in the bill now.

California uses and needs more than its formula share of funds for all housing programs, including the Section 502 single family very low income category. Through May 31 of this fiscal year, California had already obligated 106% of its initial allocation for very low income borrowers. The deferred repayment provision in S. 565 would not normally be triggered in California. We would comment, however, that with this authority should come the awareness that the responsibility for FMHA staff to work with potential borrowers increases.

We don't know if any California counties or communities could be potentially targeted under the section on housing in underserved areas. Generally such areas would receive high priority under current FmHA procedures. It would seem to us that two factors could account for the lack of housing development in the areas S. 565 targets. The first would be the lack of adequate infastructure to support the development. The second is more basic--it simply may not make economic sense to build a very few single or multifamily units in these places. This is not to say that those residents don't deserve the opportunity for better housing or that we shouldn't attempt to find a way to make it available. The provisions in Section 704 could offer some potential for helping to correct whatever problems now exist.

We are pleased to note that the Senate bill would make for profit entities eligible for transfer of Section 502 inventoried properties to the Section 515 program.

You asked us to comment on one other section of the Cranston-D'Amato bill--the Housing Opportunity Partnerships (HOP) under the HOME Corporation. We believe that the concept of federal-state-local-private partnerships is good public policy. The HOP program will never take the place of FmHA funded programs in rural areas, but it certainly would compliment those programs in communities that have the ability, expertise, infastructure and resources to take advantage of the opportunity. We certainly endorse your intent to expand the supply of affordable housing in rural areas through the HOME Corporation initiative.

It is most significant, we believe, that Title VIII of the National Affordable Housing Act continues the Low Income Housing Credit (LIHC) program. There is an ongoing debate over whether it is more desirable to address the nation's housing needs through housing policy and direct funding or through the tax code. We don't think this needs to be or should be an either or situation.

Housing and tax policy have become intertwined, each dependent on the other for the successful development of FmHA rental housing projects. We need both the programs you authorize to provide tenant subsidies--1% interest loans for 50 years and rental assistance--and the tax incentives to attract developers and investors.

This delicate combination of housing and tax policy that has proven so effective in ensuring the continued successful development of rural rental housing would be inexorably altered, however, by a provision in H.R. 1180, the pending version of the House housing bill. Section 504 of H.R. 1180 would prospectively prohibit the refinancing or prepayment of Section 515 loans for the life of the mortgage.

We endorse the intent of this provision which is to keep these rental units in the low income inventory for as long as possible. The unintended effect is that the rate of return to the investor would be cut almost 50%, making Section 515 projects a marginal, at best, investment alternative. This effectively removes the incentive to develop Section 515 projects.

The tax benefits, though substantially reduced by the 1986 tax bill, are significantly more important than the potential for a builders or management profit (for those developers who build and/or management their own projects) or than the elusive 8% return on investment. For example, in California--and elsewhere--even if a project generates the 8% return that will just about cover the cost of preparing project and partnership tax returns.

If the House and Senate agree that the lock-in period is to be extended beyond the 20 year period in current law, some approach must be adopted to mitigate the effects of that action. Otherwise Section 515 projects will no longer be attractive or competitive investment alternatives and development will be significantly curtailed.

Attached to this testimony is the proposal that we offered in response to the provision in the House bill.

In summary, we sought a method that would return most investor equity after 15 years--the LIHC compliance period--with a minimal effect on tenant rents and without using new construction funds as is the case with the rural prepayment provision in the 1987 housing bill. We accomplish this with a FmHA guarantee of a conventional loan for the equity amount and reamortizaiton of the remaining FmHA mortgage balance after 15 years. We also provide an incentive for the development of some projects that would not, or could not, be built under the current tax law.

We, and others, have done several calculations on the impact our proposal would have on Section 515 projects 15 years from now. They all show that rents would be somewhat higher because of the debt service on the FmHA loan guarantee for return of investor equity.

There are several things, however, that should be considered when looking at the raw numbers. We don't project how much tenant incomes should increase in that period of time or what comparable rents for newer projects would be. We also assume the maximum CPI inflator and do not take into account the availability of rental assistance.

Additionally, there are at least two possible actions that could neutralize any excessive rent increases. Ordinarily, project reserve accounts should be fully funded at 15 years and could be used to offset the initial rent increase. Also, any rent increase could be phased-in to keep from increasing the burden on the tenant.

We will be pleased to answer any questions, review the details of this proposal or to provide any additional information or documentation you may require today or in the future.

Thank you again for inviting us today Mr. Chairman.

RURAL BUILDERS COUNCIL OF CALIFORNIA

RECOMMENDATION RE: 50 year prepayment/refinancing restriction on Section 515 rural rental housing loans.

During the initial 15 year term of operation, such Section 515 projects, by regulatory agreement, shall be restricted for low income tenants.

At the end of the initial 15 year holding period and every anniversary thereafter, FmHA will make available to the owner the option to refinance (reamortize) the remaining FmHA mortgage principal and a gurantee of an equity loan secured by the owner from another lender.

The guaranteed equity loan would be equal to the lesser of (i) 90% of the average of a FmHA appraisal and a Fair Market Value Appraisal obtained by the owner, or (ii) 85% of the gross equity contributed by the investors, provided further that such gross equity capital may be increased by CPI inflator annually, but not to exceed 5% per annum.

Additionally, any owner of a Section 515 project who did not utilize the Low Income Housing Credit shall be eligible for a FmHA loan guarantee for the amount provided for in section (i), but not to exceed 50% of the tax credit that would have been available when the project was placed in service.

Prepayment or refinancing shall be accepted upon expiration of the term of the original FmHA loan.

Include the language from section "(G) Exception. of Subtitle C -- Rural Rental Housing Displacement Prevention -- of Title II of Public Law 100-242, the Housing and Community Development Act of 1987.

FmHA Section 515
Rural Rental Housing

Rural B[illegible]rs Council of California Proposal-Example

[15 years]

No. of Units	Loan Amt.	Term	Monthly Amortization	Per Unit Amortization
30	$1,000,000	50 yrs	$2,119	$71

Initial investor equity = $250,000 (industry norm/avg)

FmHA principal balance after 15 years = $753,400

Investor equity after 15 years (85% of investment w/5% annual CPI) = $371,875

FmHA guarantee of equity loan	$371,875	30 yrs	$2,992	$100
Reamortize FmHA loan balance	$753,400	50 yrs	$1,596	$53
Totals			$4,588	$153[1]

---

[1] cost of original debt service when calculated with 4% annual increase in operating costs (rent increase) would increase from $71 to $123.

Senator **Cranston**. Mr. Marshall.

STATEMENT OF ROBERT MARSHALL, EXECUTIVE DIRECTOR, SELF HELP ENTERPRISES, VISALIA, CA, REPRESENTING RURAL HOUSING COALITION

Mr. **Marshall**. Senator Cranston, my name is Robert Marshall. Thank you for the special welcome. I am Executive Director of Self Help Enterprises of Visalia, CA. I am also the Vice Chairman of the National Rural Housing Coalition.

I appreciate the opportunity to appear before you today and provide testimony. It's not my intent to read my full testimony, but rather to excerpt from it, and then I'll be pleased to answer questions.

First, let me briefly identify the two entities for which I am appearing. Self Help Enterprises is a nonprofit housing and community development corporation operating in the California San Joaquin Valley for the past 24 years. We have helped 3,300 poor families to build their own self-help homes primarily utilizing the Farmers Home 502 loan program.

We have also assisted families in communities in a variety of other housing and community facility improvements. We know first-hand that the need for assistance continues to be tremendous.

The National Rural Housing Coalition is the only national membership organization which lobbies for rural housing and community development programs on behalf of low-income people. The National Rural Housing Coalition representatives have testified before this Committee on other occasions and, as I say, we appreciate this opportunity.

NEED FOR ASSISTANCE

The five points I wish to make, and you've made some of those, are:

No. 1, we need a nonmetro setaside for the HOP funds.

No. 2, we need a greater increase in funds for the Farmers Home programs in total, and when I say "we," I am speaking on behalf of low-income rural residents.

No. 3, the 502 deferred mortgage provision in the House bill, H.R. 1180 seems to us preferable to the provision in this bill.

No. 4, we recommend a different method for reaching those in the underserved areas.

No. 5, we support a 50-year affordability for the 515 rural rental program.

While I am proceeding, I would to ask Maureen Kennedy of the National Rural Housing Coalition staff to show you a few photographs depicting what Self Help Enterprises is doing in the San Joaquin Valley both in new self-help housing and in housing rehabilitation.

[Ms. Kennedy hands the photographs to Senator Cranston.]

Now with regard to the points, No. 1, the provision authorizing the new housing opportunity partnership does not provide any assurance that rural areas will receive any of the funds available. The proposed legislation provides 40 percent of the funds available to State governments to meet State-wide housing needs.

Unfortunately, the bill does not follow the Federal housing and community development policy in effect since the 1974 Housing and Community Development Act. It does not require that any portion of the funds available to the States be used for nonmetro areas. We think it is essential that States be required to address the nonmetro housing needs in allocating HOP funds.

We endorse the National Housing Task Force recommendation for a fair share, a 20- to 25-percent allocation of the HOP funds to nonmetro areas. This approach is similar to that used in the small cities CDBG program, and will ensure that small towns and rural areas receive assistance under the HOP. The Small Cities program, which has been in effect since 1974, has worked well to ensure that rural areas and small towns receive Federal development assistance.

No. 2, the housing authorization levels, you have said you favor an increase, and we recognize the problems involved there, but we still push for it.

No. 3, a deferred mortgage program is a good way to provide decent housing to very poor people in small and remote rural areas. S. 566 defers up to 20 percent of principal on a section 502 loan. Research by the Housing Assistance Council indicates that this will reduce income necessary to quality for a loan by about 9 percent.

The bill also limits the programs to States which have not spent at least 10 percent of all the section 502 allocated to them since 1983.

An approach that we believe would better serve low-income families is that contained in H.R. 1180, which establishes a demonstration program with deeper subsidy. The legislation also has a full recapture requirement on all amounts deferred.

No. 4, we are pleased with the proposed legislation which established an underserved areas program, but disappointed in some of the details of the proposal. As you will recall in hearings on September 28, 1988, we proposed a new authority for this program, but instead the bill calls for a 1 percent setaside of the badly oversubscribed existing program.

We proposed a small, but vitally needed grant program to nonprofits and public bodies for capacity building in underserved areas. Instead, the bill authorizes a recoverable project preparation advance for 80 percent of traditional costs. This will do little to build the capacity of nonprofit organizations to develop housing. Many rural areas simply have no entity through which low-income housing can be planned or developed. A small grant program will build that capacity while the project advances would not.

PERMANENT AFFORDABILITY

And, finally permanent affordability. A major issue of concern to the National Rural Housing Coalition and to those of us at Self Help Enterprises which was not addressed in the Act is the permanent affordability of rural rental housing. We support again the provision in H.R. 1180 which extends that low-income use restriction on future rural rental housing loans to the full term of the mortgage, 50 years.

At this point I would like to thank you again for this opportunity and offer to answer questions.

Senator **Cranston**. Thank you very much, and thank you for the photos which are very interesting.

To give an example, one of these photos shows a shack turned into a nice looking small home for $16,000 in 1985 in Farmersville, and that's a real accomplishment.

I thank you very much.

[The prepared statement of Robert Marshall follows:]

NATIONAL RURAL HOUSING COALITION

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STATEMENT OF

ROBERT MARSHALL
VICE-CHAIRMAN

NATIONAL RURAL HOUSING COALITION

On S. 566, The National Affordable Housing Act

Before the

Subcommittee on Housing and Urban Affairs
of the
Committee on Banking, Housing, and Urban Affairs
U.S. Senate

June 21, 1989

Mr. Chairman, my name is Robert Marshall, I am executive director of Self Help Enterprises of Visalia, California and I am also Vice Chairman of the National Rural Housing Coalition (NRHC).

Self Help Enterprises is a non-profit housing and community development corporation operating in the California San Joaquin Valley for the past 24 years. We have helped 3,300 poor families build their own self-help homes, primarily utilizing the FmHA 502 loan program. We have also assisted families and communities in a variety of other housing and facility improvements. We know first hand that the need for assistance continues to be tremendous.

NRHC is the only national membership organization which lobbies for rural housing and community development programs. We have testified before this Committee before and appreciate the opportunity to appear before you today.

Rural Housing Needs

Before commenting on your bill I would like to review with you rural housing needs.

According to the National Housing Task Force, some 4.3 million low income households in non-metropolitan areas currently experience housing problems. Of this number close to two million have significant problems with the units themselves, including a lack of plumbing. Some 44% of the nation's occupied substandard housing units are located in small towns and rural areas.

Low paying jobs and the seasonal nature of work, when coupled with the downturn in natural resource based economies important to rural America, have prevented our small towns from participating in the recent improvement in the nation's economy. Non - metropolitan areas now have a higher rate of poverty and unemployment than our big cities.

The non-metro poverty rate is 18.3%. There are currently over 200 non-metro counties with poverty rates above 20% and substandard housing rates above 10%. Close to 30% (679) of the nation's non-metro counties have poverty rates of 20% or higher.

Mr. Chairman rural housing problems are not easily portrayed in big city dailies; they are far from major media markets. Yet in terms of the depravation, the insult and the despair, the problems facing rural low income people are unsurpassed.

The National Affordable Housing Act

We have reviewed with great interest S.566, 'The National Affordable Housing Act.' We applaud your efforts in promoting low income housing, and we have a number of suggestions to improve this legislation.

Rural Areas and the Housing Opportunity Partnership

First, the provision authorizing the new Housing Opportunity Partnership (HOP) does not provide any assurance that rural areas will receive any of the funds available. The proposed legislation provides 40% of the funds available to state governments to meet statewide housing needs. Unfortunately, the bill does not follow federal housing and community development policy in effect since the '74 Housing and Community Development Act. It does not require that any portion of funds available to the states be used for non-metropolitan areas. We think it is absolutely essential that states be required to address non-metro housing needs in the allocating of HOP funds.

We endorse the National Housing Task Force recommendation for a 'fair share' allocation of HOP funds to non-metro areas. This approach, which is similar to that used in the Small Cities Community Development Block Grant program, will ensure that small towns and rural areas receive assistance under the HOP. The Small Cities program, which has been in effect since 1974, has worked well to insure that rural areas and small towns receive federal development assistance.

If it is not possible to implement a set aside, then we suggest that criteria be developed to insure that areas of greatest need are given assistance by state government. States should be required to give a priority to areas which have the greatest incidence of substandard housing and poverty that are not served by the HOP program administered by local government.

At this point, criteria such as these are not included in the bill. We fear, therefore, that rural communities with housing problems less visible, but not less severe, will not fully participate in this program.

Rural Housing Authorization Levels

Our second concern is the funding levels of rural housing programs administered by Farmers Home Administration. We commend Senators Sanford and Sasser for their work on the Budget Committee to increase funding for rural housing and we appreciate your efforts in this regard as well. However, even with that increase of $100 million above current services, rural housing funding levels will still be less than half what they were four years ago.

Current demand is so great that only one in three eligible households receives a section 502 loan and the backlog for rural rental housing loans is close to $1.5 billion, three times the appropriation.

In California alone, over 5,500 families applied for home ownership loans, only about 1,880 received assistance. The picture is equally grim in rural rental housing; over $1.4 billion in approved section 515 loan preapplications are on hand. This is close to three times the amount available in Fiscal 1989.

Given the past dramatic reductions in funding, demonstrated need for rural housing assistance and the backlog for the current assistance, we are frankly perplexed as to why, in a bill which adds over $4 billion in new budget authority, rural housing is limited to current services funding.

Deferred Mortgages

We strongly support the provision in current law which sets aside 40% of section 502 funds for very low income households. We believe that in certain circumstances FmHA needs more tools to ensure that these funds are fully utilized. Since the requirement was established in 1983, FmHA has not used all the very low income funds, although the agency came close last year.

There is no particular pattern to state by state spending. States as disparate as Maine and Mississippi used more than the allocated amount while Texas and Georgia used less than their share. Overall 23 states used at least their allocation, while the balance used less.

To us, this lack of uniformity means that FmHA does not have the tools -- in terms of subsidy -- to operate a uniform program. In many cases, local FmHA staff are unwilling to loan to families they view as high risk. As a result, states with more conservative lending practices, all within the discretion of the local staff, do not make full use of the funds.

In many rural areas of the country, development of rural rental housing is not a feasible option. The communities are too small and lack the infrastructure and economies of scale necessary to develop rental housing. Single family housing is the only answer.

A deferred mortgage program is a good way to provide decent housing to very poor people in small and remote rural areas. S. 566 defers up to 20% of the principal on a section 502 loan. Research by the Housing Assistance Council indicates that this will reduce income necessary to qualify for a loan by about 9%. The bill also limits the program to states which have not spent at least 10% of all the section 502 allocated to them since 1983.

An approach that would better serve low income families is that contained in H.R. 1180 which establishes a demonstration program with deeper subsidy. The legislation also requires a full recapture requirement on all amounts deferred.

Under Served Areas

We are pleased with the proposed legislation which establishes an under-served areas program, but disappointed in some of the details of the proposal. As you recall, in hearings on September 28, 1988, we proposed new authority for this program but instead the bill calls for a one per cent set aside of the badly over subscribed existing program.

We also proposed a small, but vitally needed, grant program to non-profits and public bodies for capacity building in under-served areas. Instead the bill authorizes a recoverable project preparation advance for 80% of 'traditional' costs. This will do little to build the capability of non-profit organizations to develop housing. Many rural areas simply have no entity through which low income housing can be planned or developed. A grant program will build that capacity; project advances will not.

We do not believe that the project preparation advance program designed in your bill will work. First, it should not be applied to section 502 loans. Capacity building grants will be much more effective in reaching low income households.

The program will have difficulty in the multi-family loan program as well. Very few organizations will be willing to take what is in effect a loan for a project which FmHA may or may not later approve. The chances are too great that FmHA will not approve the rural rental housing loan application. The non-profit will then be forced to repay FmHA. As we have sometimes seen with the self-help housing technical assistance grant program, FmHA makes grants and then does not provide the necessary single family housing loans to complement them.

The fact of the matter is that a small grant program simply makes more sense. The project advance as proposed should not be applied to single family housing and will not work with multi-family housing.

Permanent Affordability

A major issue of concern to NRHC which was not addressed in the National Affordable Housing Act is the permanent affordability of rural rental housing. We support the provision in HR 1180 which extends the low income use restriction on future rural rental housing loans to the full term of the mortgage, which is 50 years.

The section 515 program is enormously useful to low income people across the country. The delivery system for the program is mostly made up of for-profit developers and they have done a very good job in improving the housing stock in rural America. The private sector has also been fairly compensated for their work. The down payment on section 515 loans is minimal. Since the establishment of the 1986 low income housing tax credit, section 515 developers have used almost 30% of the tax credits available.

Every year, the Congress approves funding for more rural rental housing units; in Fiscal 1989 some 17,000 will be financed through section 515. In twenty years the owners of those projects will have the option to prepay their loans and displace low income households for whom the units were built. As with the 1987 Housing Act, the Congress will be forced to either compensate these developers or face widespread displacement of people who have no place to go.

This Committee has faced the prepayment issue many times in the past. Developers have argued that Congress cannot retroactively change the rules on section 515 loans; if the rules are changed after a loan is made, they must be compensated. This argument has convinced many and now, through the incentives established in the '37 Housing Act, we are paying a second time for section 515 projects financed before December 21, 1979.

We supported the prepayment provisions of the '87 Act because the alternative was widespread displacement of low income people. The Congress can now act to ensure that the federal government pay for low income housing only once.

The provision contained in the House legislation will only affect new units. It will not prevent developers from seeking loans from the private sector or from seeking additional incentives through the tax code. It will not be retroactive; builders and developers will know the rules before they seek loan funds. We do not believe that it is unfair to ask developers to keep housing for low income use for the period of the loan.

Thus far, we have not seen any evidence that the incentives provided for private sector participation in section 515 are inadequate. There is high demand for rural rental housing funds and tax credits. Over the last several years many rural rental housing projects have greatly increased in value.

Indian Housing

We have an additional concern related to funding levels for Indian housing development in the Department of Housing and Urban Development, and the need to include Indian tribes as eligible participants in all assisted housing programs.

Funding levels authorized in S. 566 are totally inadequate to meet the increasing need for assistance. Nearly one out of every four Indian homes is substandard and the need has increased by 50% since 1970. At a level of 1,250 units, most low income Indian families and elderly waiting for assistance will never be served. In addition, unless specifically stated in the definitions of various programs, Indian tribes will not receive a fair share of the housing resources available. Thus Indian tribes need to be included either as "units of local government" or "States" under the various titles, especially Title V, Subtitle D, so that Indian tribes are eligible for the full array of homeless assistance.

Summary

Mr. Chairman, over the years you have been a leading voice in the Senate for decent rural housing. We support your effort to re-invigorate federal housing programs, but improvements must be made to the rural provisions of the National Affordable Housing Act. We applaud your efforts to address the crisis in housing in our major cities. However, we believe that the shortage of decent, affordable housing in our small towns and rural areas is equally severe and therefore must be addressed.

We hope that as the process unfolds that improvements will be made in S. 566 and we will be able to lend our full support to its passage. Thank you.

Senator CRANSTON. Mr. Coleman.

STATEMENT OF ERNEST COLEMAN, FORMER RURAL COMMITTEE CHAIRMAN OF THE NATIONAL ASSOCIATION OF HOME BUILDERS, WASHINGTON, DC

Mr. COLEMAN. Thank you, Mr. Chairman.

My name is Ernest Coleman. I'm a home builder from Fort Smith, AR, and I am testifying today on behalf of the National Home Builders Association. I am a former Chairman of the Rural Housing Committee. I build under sections 502 and 515 in the Indian Housing Programs in Arkansas, Oklahoma, and Kansas.

It's a pleasure to appear before you today and to testify on the rural housing provisions of the National Affordable Housing Act, S. 566.

We applaud this subcommittee's reaffirmation of support for rural housing programs as administered by the Farmers Home Administration. These programs provide low-income families and elderly with affordable housing since its passage in 1949.

On the proper treatment of prepayment of section 515 rural rental housing loans, we are concerned with the overly restrictive prepayment proposal of the House. We also would like to express our reservations on the provisions in S. 566 that defers a portion of the principal under the section 502 deferred loan program.

While we appreciate your commitment to underserved areas, we question the creation of project preparation advances that are limited to administrative needs without producing any new units of housing.

We are pleased that you have added a provision that allows the private builder to participate in the section 502 conversion program that is currently limited to nonprofit organizations.

We also urge that you designate a specific setaside for rural areas under the HOME Corporation and the Housing Opportunity Partnership Program.

EXTEND RURAL HOUSING PROGRAMS FOR 2 YEARS

Mr. Chairman, we urge that the subcommittee not only extend rural housing programs for 2 years as authorized by S. 566, but also to make the authorization permanent. This was done for the FHA in the 1987 Housing Act. The section 515 multifamily program, like FHA, was stopped several times in 1986–87 because Congress did not pass reauthorizing legislation on a timely basis.

We also urge you to support the additional $100 million provided for rural housing programs in the fiscal year 1990 budget resolution. There is a great demand for rural programs where 55 percent of the assistance goes to families making less than 50 percent of the area median income.

We are very pleased that a provision to allow developers to convert 502 single-family housing in inventory to section 515 rental housing is included. Currently the Housing Act restricts conversion to nonprofit organizations and public bodies.

NAHB is concerned with the section creating a deferred loan program under the section 502 single-family housing program. A deferred loan program which allows a buyer to defer principal as well as interest on the loan could add greatly to the cost of the program at a time of tight budget priorities. Higher subsidy costs and negative amortization would likely occur under this program. Even though the deferment is limited to 20 percent of the loan principal, negative amortization would still occur.

We urge you to make the 502 loan demonstration program, which was passed in the 1987 Housing Act, permanent as provided by H.R. 2388 that was introduced last month in the House.

The provision in the Rural Housing Improvement Act of 1988 states the income cannot exceed 100 percent of the median and that the mortgages cannot exceed the FHA limits of $67,500 to $101,250. Loans are guaranteed by the Farmers Home in areas not adequately served by other mortgage lending institutions. It also expands the Federal Agricultural Mortgage Corporation to create a permanent, less costly flow of mortgage credit.

On May 18 NAHB testified before the House Housing Subcommittee concerning section 515 prepayment. (H.R. 1180.) This legislation includes a restriction on prepayment or refinancing of newly financed 515 loans for up to 50 years. NAHB took issue with such a lengthy prepayment prohibition on new loans and suggested that consideration be given to tying changes on prepayment with changes being proposed in the low-income housing tax credit.

NO RESIDUAL VALUE LEFT AFTER 50 YEARS

We also stated that there would be no residual value left in the property after 50 years, which is one of the reasons a developer goes into the project in the first place. Allowing a builder to resyndicate once the original tax benefits run out and liberalizing depreciation rules for low-income housing would be a strong incentive with which to keep investors interested in investing in low-income projects.

It must be noted that very few section 515 projects have been sold or repaid. Also, few equity take-outs have been provided. Many States have not had any activity.

In conclusion, I think it is important to emphasize that current Farmers Home programs are working well. The Farmers Home Administration is spending all the funds appropriated by Congress. Defaults under section 515 are less than 1 percent, and section 502 inventories are being substantially reduced. The Farmers Home Administration provides the best delivery system to serve low-income families and the elderly in rural areas.

Hopefully our comments will assist you in making the most efficient use of the programs at the least possible cost.

Thank you.

Senator CRANSTON. Thank you very much.

Mr. Loza.

STATEMENT OF MOISES LOZA, EXECUTIVE DIRECTOR, THE HOUSING ASSISTANCE COUNCIL, INC., WASHINGTON, DC

Mr. LOZA. Good morning, Mr. Chairman.

My name is Moises Loza. I am Executive Director of the Housing Assistance Council.

I appreciate the opportunity that you and the committee have given the Housing Assistance Council to testify on your affordability housing bill. There are five points that I would like to touch on as summary of my statement. They are more fully detailed in the statement that I have submitted to the committee.

On extending use restrictions, HAC believes that the Congress did a good job in the 1987 Housing Act when it addressed the prepayment and displacement issues associated with section 515 projects. It may be a bit expensive, but it does seem to be keeping 515 projects in the low-income housing stock, which was the intent of the law.

The 1987 Housing Act, however, did not address the impending problem of post-1979 projects. As the use restrictions expire in 20 years from the time of the loan, tenants, Farmers Home and ultimately the Congress will again be faced with prepayment and displacement. Now is the time to address that problem.

We believe that the use restriction should be for the term of the mortgage. It would be sensible and reasonable to do it now before the crisis is upon us. Along that vein, Mr. Chairman, we have been working closely with the California Rural Builders Council in an attempt to work out something that does not harm or affect adversely the developers involved in 515, but at the same time takes care of the tenants, avoids displacement and the loss of the low-income stock.

On the authorization levels in Senate bill 566, you have pretty much taken the thunder out of our statements, but we are very pleased that Senate bill 566 extends the authorization on all the Farmers Home Administration housing programs, particularly in view of the Administration's continued efforts to substitute vouchers for housing authorizations.

INCREASE AUTHORIZATION LEVELS BY $200 MILLION

The levels contemplated in this bill would permit Farmers Home to fund about 52,000 units. That is only 35 percent of the units financed in 1979. The Budget Committees have recognized the need for additional funding for rural housing programs. I urge you to follow the Budget Committees' actions and increase the authorization levels by at least $200 million.

You of course already made clear your position, that you will do what you can, and we are very pleased to hear that statement, Mr. Chairman.

On the deferred mortgage payment plan, we very much like the idea of the deferred payment for section 502 borrowers. Our studies and Farmers Home's experience over the years indicates that low- and very-low-income borrowers are just as responsible debtors as are higher income borrowers, but most of them never get the chance to demonstrate that ability.

The deferred payment program would effectively reduce the income level necessary to qualify for a section 502 loan. The plan outlined in section 704 of your bill defers payment on 20 percent of the loan and interest, reducing the qualifying income level by about 9 percent. We believe that a reduction of up to 50 percent would reduce the qualifying income by 23 percent. Typically a family with an income of approximately $8,500 a year could then qualify for a home ownership loan. I believe the average income is now about $11 or $12 thousand per annum.

On the underserved areas initiatives, as with the deferred payment plan, we are very pleased that the proposed legislation attempts to address those remote areas of the nation which do not seem to receive their fair share of Farmers Home attention and funding.

I suggest that the criteria for designation of an underserved area also have a population limit, perhaps 5,500. Our studies consistently show that it's the much smaller, more isolated communities that are consistently left out of much of the funding, not just from Farmers Home, but of all assistance programs.

NEED FOR BUILDING GRANT PROGRAM

We also think that the proposal should have a grant program. We do not believe that an advance of funds will find takers in the rural remote areas contemplated by the bill. What is needed is a small capacity building grant program extending over a couple or a few years which will permit rural communities to prepare themselves to effectively utilize an advance of funds.

On the underserved populations——

Senator CRANSTON. Could I make one clarification.

Mr. LOZA. Sure.

Senator CRANSTON. There is a drafting error in S. 566 that makes the project preparation advances repayable if the project is not funded. That will be corrected before the bill goes to the committee. The advances will be repayed in the case of funded projects only.

Mr. LOZA. That's a big difference, Mr. Chairman. Good. Thank you for telling me that.

On the underserved populations, I would just like to mention that there is, as you have already mentioned, the problem of housing the Indian population which is very serious in this country. There are also retired, elderly and disabled farm workers, migrant workers and a number of other identifiable groups that, without question, comprise huge percentages of the worst-housed in this country.

What we would like to do is at least begin to talk to your staff about some acknowledgment of those needs and begin to talk about some ways to address those very serious and very tough housing problems.

In summation, Mr. Chairman, I would like to thank you and the committee, particularly Senator D'Amato and the staff who deserve a great deal of credit for recognizing that the tide is now beginning to turn and that it is possible to enact new and progressive housing legislation. You have our sincere thanks.

My comments are to attempt to constructively aid in your efforts. My complete statement sets forth in more detail the kinds of changes that we believe are necessary in the areas that I have briefly mentioned.

Again, I thank you very much and appreciate this opportunity to testify on this essential legislation.

Senator **Cranston**. Thank you very much, and thank you for your supportive comments, and I say the same to the other people who have already testified.

[The prepared statement of Moises Loza follows:]

HAC

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Statement of

MOISES LOZA

Executive Director

THE HOUSING ASSISTANCE COUNCIL, INC.

Before The

UNITED STATES SENATE

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

Regarding

The National Affordable Housing Act

S. 565 - S. 566

June 21, 1989

Mr. Chairman, Members of the Committee, I am Moises Loza, the Executive Director of the Housing Assistance Council (HAC), and I thank you very much for inviting me to appear and testify about S.566 and the rural housing matters it addresses.

The Housing Assistance Council is a national nonprofit corporation supporting the development of rural low-income housing nationwide. For 18 years HAC has been providing technical housing services, seed money loans from a revolving fund, housing program and policy analysis, training and information services to local and State governments, nonprofit and private organizations involved in the production of housing in rural and small town America. This has given us, we believe, a grasp of both the housing need in rural America and the policies and programs which are needed to meet that need. It has also given us a very real sense of what works and what does not work among various housing programs, and to some extent, why.

THE OVERWHELMING NEED FOR MORE HOUSING IN RURAL AMERICA

The extraordinarily high level of rural poverty is of major concern to housing advocates, since the rural poor tend to live in areas where decent housing is scarce, and urban solutions are largely inapplicable. In many urban areas, the paramount housing need of the poor may be for rent supplements to provide access to available standard units. In contrast, the quality of existing housing in Appalachia, much of the deep South, the Ozarks, the Hispanic Southwest, Indian reservations everywhere, and many other rural areas is so inadequate that resources for housing rehabilitation and development, in addition to rent and mortgage supplements, are absolutely essential to ensure decent, safe, and sanitary shelter for poverty-level households.

HAC was very pleased when nearly three years ago the Committee indicated that the legislation it was then commencing to develop would build upon the successful programs of the past, blending new initiatives and new approaches with the ideas which had worked in prior years. We understood and supported that kind of evolutionary development, which would expand and enlarge the successes of the 1950s '60s and '70s by blending with them the new and different responsibilities and demands of the 1980s and '90s.

We were pleased because The Farmers Home Administration programs presently available to address rural housing needs fit that pattern. They have been remarkably successful within the limited economic area in which they operate. We are pleased that the Committee recognizes that success is implicit in extension of all FmHA housing programs for another two years. That is particularly important in view of the attempts in past years to substitute vouchers for the vital construction programs now operating through FmHA offices throughout rural America.

But, Mr. Chairman, I do believe that the funding authorizations level are low.

° It is too low in historical terms: the FY 1990 authorization would produce an estimated 52,000 units. That would be but 35.8% of the 146,619 units produced in 1979.

° It is too low when measured against demonstrated need: The Farmers Home Administration offices around the country have in hand, waiting to be funded, approved applications for rental and homeownership units totaling two and one-half times the number this authorization would permit. And that number grows weekly.

° It is too low in terms of urban/rural equity: Of the $4.1 billion in new money contemplated in S.566, none of it is clearly directed toward rural programs, and without that direction, "earmarking" if you will, it is unlikely to be utilized in rural areas. HAC believes there should be a fair share allocation for rural areas.

The Budget Committees have recognized the need for additional funding of rural housing programs and have permitted a significant increase for that purpose. I urge the Committee to increase the authorization levels by at least the $200 million permitted by the First Budget Resolution. Of course that is not enough, but it would at least indicate that the funding of rural housing programs has hit bottom and is now on the way up.

RETAINING THE LOW-INCOME HOUSING STOCK

Mr. Chairman, the Housing Assistance Council considers the long-term retention of Section 515 units within the low-income housing stock to be of paramount importance. HAC has before urged, and we do so here, that the use restriction on all newly funded 515 and Section 514 farmlabor housing projects be for the life of the mortgage. That would be 50 and 33 years respectively.

We think that such units should remain available for low-income families in perpetuity, or as long as they are needed.

The FmHA section 515 multi-family program has been enormously successful over the years. In fact, many of us are becoming aware for the first time of just how successful it has been. That awareness comes as we are faced with expiring use restrictions, prepayment of mortgages, and the loss of low-income units from the stock at the very time that homelessness is a critical housing problem in America. To its everlasting credit, this Committee, in the Act of 1987, dealt with a major part of the prepayment problem so far as existing units are concerned. But it was an expensive solution. Right now, somewhere in the country, FmHA is closing a loan for a 515 project, which in 20 years will be eligible for prepayment, and the taxpayers will buy it once more, through an equity loan. And if some remedy is not adopted, 40 years from today, the taxpayers will buy that same property one more time.

We need developers, investors, and owners and managers for the 515 projects. And unless the developers and others receive a reasonable return, they will not participate, and without them the program cannot provide the housing we so desperately need. The Federal government should be, in its business dealings, businesslike. It should be compassionate, fair and reasonable.

There is yet another prepayment issue which must be addressed. Should the Congress adopt the "life of the mortgage" use restriction, it would effectively settle the prepayment issue for prospective 514 and 515 loans. The 1987 legislation mitigated many of the prepayment problems encountered in loans made prior to December 21, 1979. But there exists a gap between the the December 1979 date and the time you may deal with prospective loans. What will happen to a 1980 funded 515 project, and its tenants, when the use restrictions expire in the year 2000?

HAC recommends that this committee consider extending the pre-1979 restrictions to those section 515 loans made subsequent to 1980, but prior to enactment of "life of the mortgage" restrictions.

EXPANDING THE PRESENT FMHA HOUSING PROGRAMS

As I have said, we believe FmHA housing programs are very successful in the areas in which they operate, but that the area of operation must be expanded in both scope and targeting capacity. S. 566 proposes to do that in two different ways, and HAC applauds the effort.

The Deferred Payment Program

Given the opportunity, very low-income households are fully capable of assuming the responsibility of long-term loans. We have attached to this testimony a copy of HAC's report, A Home of

Our Own, published last summer. This study found that among 894 FmHA borrower households tracked from 1981 to 1986, those with very-low incomes repaid their loans as conscientiously as did those with higher incomes. Most poverty-level borrowers were actually making payments ahead of schedule by the end of the period studied. The limitation on the rural homeownership program's usefulness, therefore, is the degree to which very low-income households are given the opportunity to participate. Because that opportunity depends upon the hard cash payment requirements of the loan, it is this area which should be modified in order to expand the numbers of very low-income families who may qualify for an FmHA-financed house.

. Section 703 of S.566 attempts that modification by deferring repayment of 20% of the principal on a Section 502 loan, to be later repaid as the borrowers income rises. That would lower the income a family would be required to receive in order to qualify for a loan. Mr. Chairman, HAC believes the measure should go further to make any appreciable change.

It seems to be generally accepted that a household should not have to pay more than 30% of its income for shelter cost. That shelter cost, for homeowners, is made up of mortgage principal and interest, taxes, utility charges, insurance and maintenance. A $50,000 FmHA mortgage, amortized over 38 years with interest credit down to 1% would require an annual income of about $11,300. That permits payments of $1,584 for principal and interest, $700 for taxes and insurance and $1,100 for maintenance and utilities. (These are national averages from FmHA figures.) A reduction of 20% in the repayment of principal would permit an annual payment of $1,267 for principal and interest while the other homeownership costs remain the same. Annual income required would be about $10,200, a reduction in income required to qualify of about 9%.

If, however, the deferral in repayments were permitted up to 50%, depending upon individual need, the income required would drop from $11,300 to $8,650, a 23% reduction in required income. Note that shelter payments would be $792 for mortgage principal and interest on one-half the normal payment, with one-half of the payment deferred (still accruing 1% interest) plus $1,100 for utilities and maintenance and $700 in taxes and insurance. Total annual shelter costs would be $2,582.

The difference in the amount deferred at 20% and at 50%, is $460 per year, and we believe the overwhelming number of borrowers will ultimately repay it. More important, the higher deferral means an opportunity for homeownership to families with incomes $2,600 lower than is now the case, and $1,500 lower than the 20% deferral. HAC believes it is to everyone's advantage to put that $8,650 household into a homeownership situation rather than subsidize their shelter cost in a rental unit. Rural Rental Payments in Section 515 units average about $2,350 annually.

The demonstration we envision would work in the following fashion:

1) The borrower would receive full financing. (Current law)

2) The mortgage would be amortized at 1% for 38 years. (Current law)

3) The borrower would make mortgage payments only to the level of affordability (30% of income to pay principal, interest, taxes, insurance, utilities and maintenance) and if that payment was insufficient to meet all those obligations, up to 50% of the payment on principal and interest would be deferred. (This is a change)

4) The borrower will pay taxes, insurance, utilities and maintenance. They will not be subsidized by FmHA.

5) That deferred portion of the payment would continue to draw interest but payment would only be required based upon affordability, or at the end of 38 years, or disposition of the property, whichever is appropriate.

6) The deferred payment would be gradually converted to payment status, based upon affordability, and all of the deferral, along with interest credit payments would be subject to recapture at the property's disposition.

One final comment should be made about the deferred payment program. Some families will be unable to repay the deferred portion of the payment. It is conceivable that at the end of 38 years, a family may still be meeting only half its mortgage payment. The study I referred to above, and FmHA's experience with interest credit, indicates that the numbers of such situations will be very small, but it will inevitably happen. So what? Reamortize the deferred balance and start over again. The program has served its purpose of providing decent shelter, at an affordable price, at a far lower cost that any other program available to that family.

Housing In Underserved Areas

Section 704 dealing with underserved areas addresses a serious need, but in our judgment does so inadequately.

1) The definition of "underserved area" should include a population limitation to insure that the special attention contemplated does indeed go to the very rural and remote areas.

We suggest that any Indian reservation or any county of up to 5500 population be eligible (if it meets the other criteria), and that the Secretary be permitted to waive this requirement only upon a showing of special circumstances.

2) The set-aside of funds from already seriously underfunded programs will discourage applicants (will there be any money when I'm ready?); and, reduce the money available for those already oversubscribed programs elsewhere. We urge a new authority for this vital program which will both emphasize its importance and leave intact the Basic FmHA appropriation.

3) The project preparation advance, in my judgment, will not work. What is needed is a small continuing grant program which will permit small, unsophisticated, community groups to develop their capacity to provide affordable housing to their community in a variety of different ways, using any and every funding source they may find. This capacity building can only occur over a period of years, and the "advance" will be of no assistance to an organization that is three, four or five years away from submitting its first pre-application. They would quite properly hesitate to accept an advance, which must be repaid, on their very first project. And if it is not their first project, it is not the group we visualize as the targets of this program.

FmHA LOANS ON INDIAN RESERVATIONS

The threat of land alienation is the major factor in the lack of FmHA assistance to Indians. During the past five years Indians both on and off the reservation have received about one-half of one percent of FmHA sections 502 and 504 assistance. Reservation poverty and decrepit housing are already a disgrace. It should not be compounded by our failure to extend to Indians the kinds of housing programs suitable to reservation life. The National American Indian Housing Council has proposed legislation which would eliminate land alienation as a detriment to the use of FmHA housing programs on reservations. The change would not establish a new program or extend appropriations levels, but would provide an opportunity for access to a group of citizens with dramatic housing needs. HAC urges the adoption of the NAIHC amendment.

The Housing Opportunities Program

Mr. Chairman, we have said repeatedly that without a specific direction from the Congress, block grants do not always end up serving rural areas in proportion to the existing need, measured by virtually any standard. From the data we have, it is all too apparent that the rural "fair share" is in fact a rural "bare share" - they barely get anything at all.

The American Housing Survey data for 1983, as analyzed by HUD, indicates that non-metropolitan areas of the nation have 39.5% of the low-income housing need for new or rehabbed units. Within nonmetro areas reside 43% of the 5,356,000 "low-" and "very low-"income households who are in inadequate housing, including 49% of the 2,153,000 households in "severely" inadequate units, and 25% of the 1,429,000 households in units which are simply overcrowded.

In 1983 HUD requested, and the Congress granted, a waiver of the 20-25% nonmetro set-aside in its low-income housing assistance programs. The result was a precipitous fall in the share of these resources going into nonmetro areas. In 1986, 11% of public housing, 19% of Section 202, 17% of Section 8 existing section 8 and moderate rehab, and 18% of voucher funds reached non-metro areas. In apparent response to the dramatic reduction in rural area funding commencing in 1984, that the waiver was not extended in the FY 1989 appropriation bill for HUD, and non-metropolitan areas are beginning to again receive more equitable funding.

It should also be noted that there are hundreds of communities in non-metropolitan America not be served by FmHA, which is restricted to rural areas and towns of under 20,000. HUD programs must be available to serve such communities, and a non-metro set-aside helps them do so.

HAC urgently requests that the Committee establish a fair share for non-metro areas of at least 25% in the HOP program. Without that specific direction, large areas of the country with some of the most intractable housing problems will simply not be able to take advantage of the many new and innovative features of the HOME corporation, including HOP.

OTHER RURAL HOUSING INITIATIVES

Mr. Chairman, I noted with some dismay that none of the testimony on supportive housing earlier this month even mentioned the desperate conditions in which so many elderly, disabled and retired farmworkers are forced to live, or on the equally perilous housing conditions of migrant farmworkers.

The Housing Assistance Council and the National Task Force on Older Farmworkers, of which HAC is a member, have made several suggestions for legislative initiatives which would address these problems. We continue to believe that these neglected populations merit the attention of this Committee, and we urge that we be permitted to work with Staff, and others, to develop suitable programs.

While HAC's principal concern over the years has been directed toward housing for the poorest of the poor, we are certainly sympathetic toward those families which are only marginally better off - county, town and school district employees toward the bottom of the wage scale, service industry workers, grocery clerks, and gas station attendants - many of whom have very difficult housing problems. A Bill introduced in the other body, HR 2388, would establish a non-subsidized guaranteed housing loan program for low and moderate income rural families with incomes up to the area median income. We believe such a bill has merit, and I ask the Committee to consider such an approach.

Mr. Chairman, I cannot conclude my statement without mentioning our support for your efforts, and those of the Committee, in addressing these very difficult housing problems. If my testimony seems critical, I intend it to be constructive criticism. The problems you address deserve no less.

That concludes my statement, Mr. Chairman, and I again thank you for the opportunity to appear.

Senator CRANSTON. Mr. Beresh.

STATEMENT OF L. EARNEST BERESH, EXECUTIVE DIRECTOR, RURAL HOUSING IMPROVEMENT, INC., WINCHENDON, MA

Mr. BERESH. Mr. Chairman, I am Ernie Beresh, the Executive Director of Rural Housing Improvement, which is a regional nonprofit provider of rural housing and water resources assistance based in Winchendon, MA.

I very much appreciate this opportunity to appear and testify on the rural housing section of S. 566.

RHI is this year celebrating its 20th year of service to the rural citizens and communities of our region. We administer direct service programs in Central Massachusetts and in Southwestern New Hampshire ranging from section 8 and State rental assistance to Farmers Home self-help home building to rental housing production using Farmers Home 515's and HUD section 202's.

We are also a technical assistance provider to the less affluent rural communities in the 9 Northeastern States as the Northeastern RCAP in the nationwide network of 6 regional RCAP's currently focusing primarily on water resource quality issues.

RHI congratulates the committee on creating innovative approaches to stimulate affordability housing production by proposing the Housing Opportunity Partnership and the HOME Corporation.

CONCERN OF FAIR AND EQUITABLE DISTRIBUTION OF FUNDS

One of RHI's major concerns about the present design of the HOP is that it fails to reasonably assure that a fair and equitable distribution of HOP resources will reach rural areas.

Mr. Chairman, I am encouraged by your earlier comments, and it sounds like that language will be strengthened when the final bill comes out. That is important because it is very unlikely that rural areas will be able to access those HOP resources directly, and therefore must rely extremely heavily on whatever resources can be obtained through the State allocation.

I believe the distribution requirement in the Federal law should specifically direct that the appropriate proportion of allocated funds and resources reflecting the rural population in relation to the total population of that State must be set aside or targeted for use in those rural areas.

It is very important that S. 566 address the issue of prepayment of section 515 mortgages for the future by requiring that the term be the length of the mortgage. Since such housing should be presumed to be needed at the end of 20 years at least as much as it is now, unless proven otherwise, it doesn't make sense to have to pay for it all over again at the end of such a short period of time.

Incentives remain critical to the production of rental housing in rural areas by private developers since equivalent needs perhaps expressed in different forms, but nonetheless necessary, are not yet fully understood and supported by most government agencies in order to encourage the development and ownership of rental housing by nonprofit agencies where prepayment and expiring use issues would be nonissues.

Persons in desperate need of some form of assistance in order to live in minimally decent and safe housing cover a range far broader and far deeper than current programs even begin to be able to address.

RHI's staff turns away large numbers of people who just barely miss the maximum income cap for eligibility, but who are clearly not able to qualify for conventional assistance. Within the current maximum income program limits, waiting lists of eligible clients for most programs are so long as to require waits of several years before they can be assisted.

The proposal to establish a deferred payment program is a logical and much needed adjustment in approach to enable the section 502 program to reach the very low-income 40 percent targeting that Congress has set out to reach the most needy of those in rural areas.

We have found that the window of workability, which is determined by maximum income limits, the cost of buying and maintaining a modest home and the borrower's ability to repay the mortgage loan, is currently extremely narrow. Of each 20 income-qualifying households we prescreen and interview, only one is successful in getting through that narrow success window.

Under the current deferred payment proposal the minimum annual income would drop by about 9 percent, or an improvement of only $1,100 in that workability window. Deferral of up to 50 percent of the principal, however, would extend that window by about $2,600, a widening of opportunity that could really make a notable difference in qualifying the very low income.

Mr. Chairman, the bill currently limits authority to use its provisions to those States that have failed to use 10 percent or more of their very low-income setasides since 1983. I submit that the 40 percent is but a minimum targeting expected of all jurisdictions, that there is nothing wrong with reaching an even higher percentage of the very low income, and that the proposed deferred payment loan program should be extended as a standard option with the 502 program nationwide.

S. 566 HAS AN ESCAPE HATCH TO ALLOW REALLOCATING UNUSED MONEY

We support efforts in the bill to address the needs of the underserved rural areas. We find it somewhat discomforting that there is an escape hatch which allows for reallocating the unused setaside money each September 1st which could diminish the quality of that effort.

The most encouraging outcome of including the section on project preparation advances is the recognition that that is a need in rural areas. The development of a small entity in an underserved area demands a switch in approach, however, from reimbursable project specific advances to an approach more closely resembling the mutual self-help grantee system or similar core funding.

Mr. Chairman, I want to say on behalf of other field based rural housing agencies that we are very much encouraged that the long devastation of Farmers Home funding levels may have come to a halt. S. 566 provides for a modest increase in total funding, and this is truly encouraging.

We take hope in signs that the nation's priorities are being reordered to begin addressing those problems.

Mr. Chairman, I am very pleased to have been invited to testify before this committee. I applaud you on your significant initiatives, and I stand ready to assist in any way I can to fashion a new and more vital response to housing issues in the 1990's.

Senator **Cranston**. Thank you very, very much.

I want to respond to one point, your comment that rural areas won't get a fair share of HOP funds. We have been hearing just the opposite concern from large cities who tell us the States will send a disproportionately large share to rural areas.

We want to give States the flexibility to assess their own needs, but it's our clear intent that the needs of rural areas be fully recognized in any distribution of HOP funds.

As I have said before, we will be refining the language of the Cranston-D'Amato bill to make sure that our concern for rural areas is carried out, and I urge you to work with the subcommittee on details before the bill gets to markup.

Thank you very much.

[The prepared statement of L. Earnest Beresh follows:]

Statement of

L. EARNEST BERESH

Executive Director

RURAL HOUSING IMPROVEMENT, INC.

Before The

UNITED STATES SENATE

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

Regarding

The National Affordable Housing Act

S. 565 - S. 566

June 21, 1989

Mr. Chairman, Members of the Committee, I am Earnest Beresh, the Executive Director of Rural Housing Improvement, Inc., a regional nonprofit provider of rural housing and water resources assistance based in Winchendon, Massachusetts. I very much appreciate this opportunity to appear and testify on the rural housing section of S. 566.

Rural Housing Improvement, known as "RHI," is this year celebrating its 20th year of service to the rural citizens and communities of our region. RHI administers direct-service programs in central Massachusetts and southwestern New Hampshire ranging from Section 8 and state rental assistance to FmHA Self Help homebuilding to rental housing production using FmHA Sec. 515 and HUD Sec. 202 funding. RHI is a technical assistance provider to the less - affluent rural communities in the northeastern United States as the northeastern RCAP in the nationwide network of 6 regional RCAPs, currently focusing primarily on water resource quality issues.

HOUSING OPPORTUNITY PARTNERSHIP (HOP)

RHI congratulates the Committee on creating an innovative approach to stimulate affordable housing production by proposing the Housing Opportunity Partnership. The approach stretches scarce federal dollars by stimulating state and local participation in planning and financing. Massachusetts has operated a similar program for several years and we believe it is an excellent approach in many situations.

One of RHI's major concerns about the present design of the program is that it fails to reasonably assure that a fair and equitable distribution of HOP resources will reach rural areas. The needs of rural areas often are not addressed due to fewer spokespersons; distance both geographically from seats of authority and experientially from the decision-makers who understand urban centers but not rural communities; a dirth of developers, agencies, and social structures strong enough to command the attention of federal and state housing agencies; and the absence of full-time officials and professionals in smaller communities who have both the expertise and the time to successfully compete for their fair share of resources. As with any 'minority' population segment, understanding, acknowledging, and fairly addressing the needs of rural areas depends on the statesmanship of representatives of majority interests.

Although S. 266 indicates that "participating States shall be responsible for distributing assistance throughout the State according to the State's assessment of the geographical distribution of the housing need within the state," there are no assurances here that compliance with this general directive could not be satisfied by merely targeting the heavily populated areas of the state, thus depriving smaller communities having a proportional need -- but inherently projecting less impressive totals -- of their fair share. I believe the distribution requirement in the federal law should specifically direct that the appropriate proportion of allocated funds and resources reflecting the rural population in relation to the total population of the state must be set aside or targeted for use in those rural areas. I favor leaving discretion with the States for creating the most effective means of insuring that HOP resources are proportionately distributed to rural areas, but I also believe it is necessary to stimulate that effort to reach rural areas by reserving a fair share of resources exclusively for use in rural areas.

Although I believe that a similar targeting to rural areas should be set out in the federal government's allocation awards in the categories of "general local governments" and "incentive allocations," it is naive to believe that small communities will be able to effectively access much, if any, of that 50% of the 80% of HOP appropriations. In fact, the structuring of the HOP program, as well as other initiatives in the other subtitles of S. 566, dramatically illustrates the ongoing frustrations of rural citizens and advocates in trying to get the federal government and many state governments to acknowledge that low-income people do live in rural areas, that they have severe housing problems, and that program designs need to take into account factors of smaller size, inadequate or uneven delivery, and limited administrative capacity. Rural communities, by definition in the bill, cannot meet the qualifying tests for a participating general local government. Although it is hypothetically possible that if a large number of rural communities banded together in such numbers as to be able to trigger the minimum formula allocation required in the bill, then they might qualify (as a consortium) as a 'participating jurisdiction,' but my reading of the probable size and numbers of such towns that would be required to qualify them as a consortium makes such an approach virtually impossible, if not administratively a nightmare. With the exception of Farmers Home Administration programs and certain other few federal programs, rural communities have been forced to rely heavily on getting a share of the resources allocated to the states, as reflected in the Community Development Block Grant Small Cities program, for example. Since the rural areas of the nation will be unable, in all probability, to qualify, let alone effectively compete, for the federal pools of resources, it becomes even more essential that clear requirements for an equitable distribution of state allocations to rural areas be a matter of law or regulation.

Although I would understand your use of a HUD-like definition of a nonmetro area as those having populations of less than 50,000, I would prefer that the allocation requirement be based on the FmHA definition of 10,000 or less (excepting certain areas up to 20,000), since communities larger than the FmHA standard almost certainly have full-time officials and professionals better able to compete successfully for program resources.

PREPAYMENT OF FMHA SECTION 515's

It is very important that S. 566 address the issue of prepayment of Section 515 mortgages for the future by requiring that the term be the length of the mortgage (50 years) unless it can be established that the intended population is not present in sufficient numbers to occupy the building in accordance with current regulations.

Such a requirement would make clear that it is in the public interest to effectively preserve government-assisted housing for the greatest length of time for which a need continues. Making this clear in advance will avoid the awkwardness currently evident in dealing with expiring use agreements. Since such housing should be presumed to be needed at the end of 20 years at least as much as it is now, unless proven otherwise, it doesn't make sense to have to pay for it all over again at the end of such a short period of time, especially since the costs of replacing the housing are likely to be substantially higher and more difficult to develop (as suitable land becomes more scarce), and the act of replacing the housing inevitably results in unnecessary disruption of people's lives.

Private for-profit developers have built most of the rental housing in rural areas and there certainly would be little around if they hadn't. The structuring of FmHA 514 and 515 projects, with its mechanisms for allowing for overhead costs, the taking of profits, and the enjoyment of tax credits, provides incentives for the private for-profit developer to develop the rental housing since there is a strong likelihood that the developer will come out of the process not just surviving but making some money along the way. These incentives remain critical to the production of rental housing in rural areas by private developers, since equivalent needs (expressed in different forms, but nonetheless necessary) are not yet fully understood and supported by most government agencies in order to encourage the development and ownership of rental housing by nonprofit agencies where prepayment and expiring use issues would be non-issues.

DEFERRED PAYMENT LOAN PROGRAM

Persons in desperate need of some form of assistance in order to live in minimally decent and safe housing cover a range far broader and deeper than current programs even begin to be able to address. RHI staff turn away large numbers of people who just barely miss the maximum income cap for eligibility, but who clearly are totally unable to qualify for conventional assistance. Within the current maximum income program limits, waiting lists of eligible clients for most programs are so long as to require waits of several years before they can be assisted. Rental assistance, if it were available in sufficient amount and if the supply of rental units were adequate, could alleviate much of the dire need among the very low income. But this condition is far from being met, and, by their nature (lack of water/sewer and other infrastructure, philosophy, rural character, limited investment, etc.) rural communities favor homeownership forms of housing.

Several years ago Congress mandated, in the context of sharp cuts in federal support for low-income housing, that the very limited resources remaining should be targeted to those most in need. This logical response to a most unfortunate set of circumstances found expression in limiting Section 8 rental assistance to those households earning less than 50% of area median income. [More recently, Section 8 has been further restricted to even more narrow subsets of the very poorest -the most desperate of the desperate, if you will.] It was also expressed in requiring that 40% of FmHA Section 502 homeownership loans go to households earning less than 50% of area median income, as well. If, out of the huge universe of those needing assistance, one is forced to sub-target because there are insufficient resources to even minimally -- or respectably -- deal with the whole, then RHI agrees with, and supports, the position that those resources need to largely go toward helping the neediest of the needy. The proposal in S. 566 to establish a deferred payment program is a logical and much needed adjustment in approach to enable the Section 502 program to reach that Very Low Income 40% targeting.

As you know, FmHA has been unable to reach the 40% targeting goal for the Very Low Income (VLI), although it came very close last year. I can tell you from experience that it is not because there are insufficient numbers of households who need the 502 program and who make incomes that fall below the VLI maximum; there are many more times the number of income eligible and qualifying households than there are Section 502 resources available. From a great deal of field experience, I can tell you that those who can't finally qualify usually fail either because they don't have sufficient repayment ability under current program regulations, or have weak or nonexistent credit history. We have found that the 'window' of workability determined by maximum income limits, the cost of buying and maintaining a modest home, and the borrower's ability to repay the mortgage loan is extremely narrow. Of each 20 income-qualifying households we prescreen and interview, only 1 is successful in getting through that narrow success window. On the other hand, we have a huge waiting list of Low Income (LI) clients who are able to meet repayment requirements under existing program rules. The deferred payment feature could significantly widen that window of success for the Very Low Income if the Senate is willing to go deeper than is currently proposed.

Under the current deferred payment proposal, which would allow deferral of up to 20% of the principal, the minimum annual income (according to analysis by the Housing Assistance Council) required to obtain a $50,000 loan would drop by about 9%, or an improvement of only $1,100 in that 'workability' window. Deferral of up to 50% of the principal, however, would extend that window by about $2,650, a widening of opportunity that could really make a noticeable difference in qualifying the Very Low Income.

As long as the mortgage payments over the life of the loan are adjusted within an ongoing 'affordability index' (such as 30% of income for mortage, interest, taxes, utilities and maintenance), then the borrower -- and consequently the borrower's ability to make payments -- is no more at risk than is currently the case. The vast majority of borrowers will be able to assume more of the principal in their payments as their incomes rise over the years. For those few borrowers whose incomes do not rise sufficiently over the years to repay the total mortgage with interest at the end of 38 years, then it does not seem unreasonable to consider reamortizing the balance for another period of years, which, at the very worst, would be 50% of the loan plus accrued interest at 1%. There is nothing particularly 'magical' about a 38 year-term; if a longer term continues to address the need to assist a very low income household, then it should be done, especially since the longer repayment period, under the worst conditions we can hypothesize, would be considerably cheaper than virtually any alternative that is likely to be available.

Deferred payment loans are commonly used both in the Small Cities Programs and Housing Preservation Grants that RHI administers for the substantial repair and rehabilitation of the homes of low-income households. Typically, there are no payments involved until the sale or transfer of the property, and the loans sometimes go as high as $25,000 to $30,000, although they typically average $15,000. The approach is extraordinarily effective in reaching the very needy. Although our experience with deferred payment loans extends back only 5 years and there have been relatively few sales or transfers, so far there have been no losses to any of the programs. The proposed FmHA deferred payment program, by requiring regular monthly payments based on repayment of at least 80% (or 50%) of the principal and interest, substantially reduces the risk of loss to the government. Insuring the continuing availabilty of low-cost repair programs for the very low income and the judicious use of periodic property equity inspections would not only further reduce the risk to the government caused by depreciating -- rather than appreciating -- property values undermining its security, but would also fulfill what should be an ongoing interest in providing safe and decent housing for the household.

Finally, Mr. Chairman, regarding the deferred payment loan program, the bill currently limits authority to use its provisions to those states that have failed to use 10% or more of their Very Low Income setasides since 1983. Therefore, a proposal that would significantly improve the ability of very low income households to access the Sec. 502 program -- an extremely desirable goal consistent with national housing policy and helping the neediest wherever they may reside -- is, unfortunately, presented as a mechanism for helping some jurisdictions to meet what has again become a 'magical' number -- 40% for Very Low Income. I submit, Mr. Chairman, that the 40% is but a minimum targeting expected of all jurisdictions, that there is nothing wrong with reaching an even higher percentage of the Very Low Income, and that the proposed deferred payment loan program, especially if it allows for up to 50% deferred loans, is an extremely important tool to do just that. The bill should provide that this approach be made available as a standard option within the 502 program nationwide.

SET-ASIDE FOR UNDERSERVED RURAL AREAS

The section that provides for specific targeting to underserved areas draws attention to the fact that the system of delivery of current resources and programs has some serious holes in it, and for that I am grateful. All low income persons, and especially those living in poverty, deserve nothing less than to have at least a truly equal opportunity to access the assistance they need to be able to live in a modest, decent, and safe housing unit. A major part of the problem is attributable to the fact that there is insufficient assistance available to meet the need no matter where one lives -- and especially if one is extremely low income. That overriding fact will not be addressed until FmHA programs are funded at substantially higher levels than they are currently, and I am disappointed that the initiative to deal with underserved areas simply draws more heavily upon already scarce resources rather being funded in addition to general authorizations.

Beyond the general problem of limited resources, there are some areas of the country that especially stand out as needing special attention and special efforts to deliver program resources to the most needy. These historically difficult areas to serve are difficult for a variety of reasons, not the least of which will be a finding of non-existent development, packaging, and advocacy organizations, which another section of the Title is intended to address. Trying to reach such areas in a way that really makes a difference should be an interesting experience for everyone involved. I would suggest, however, that sincerely putting together a program that works in such areas will require dedication and creativity from FmHA staff as well as from concerned local groups, and it bothers me that the escape hatch of reallocating unused setaside money each September 1 could diminish the quality of the effort.

I am not familiar enough with the probable 'underserved areas' to suggest whether the definitions for determining such areas is adequate, although in general it would appear that the correct factors to measure those areas are logically identified. It should be noted, however, that targeting the very low income (high levels of poverty is one of the measures) will need the deep flexibility provided by the deferred payment program, which, under its separate set of qualifications as currently described, may not even be available!

PROJECT PREPARATION ADVANCE

S. 566 provides for project preparation advances in order to promote the development of affordable housing in targeted underserved areas. The most encouraging outcome of including this section is to acknowledge that a principal cause for there even being underserved areas is often the absence of a viable development capability. For a wide variety of reasons -- including small, dispersed populations; part-time governments; a more limited investment environment -- an adequate development and delivery system is difficult to create and sustain in a rural environment. However, as presented, I find it difficult to believe that an informed start-up nonprofit or public entity would wish to take the risks involved to participate.

First, the approach is based on 80% of FmHA-approved costs involved in preparing an application for submission for funding, and those approved costs must be 'customarily included in the amount financed under such a loan.' These conditions pose considerable pitfalls for the rural entity, since FmHA usually does not 'recognize' all the costs that go into preparing an application; thus the entity would have to allow for possibly significant costs that aren't approved by FmHA and which would therefore fall outside the base costs for which the entity will receive only 80% in advance, anyway. Since FmHA does not 'customarily include' such costs in the amount financed under most of the Sections cited in the bill, one is essentially left with the hope of retrieving the small (and inadequate) development fee now permitted to nonprofits in Section 515 projects. And, if the project doesn't successfully navigate its way through the stormy seas of site approvals, zoning approvals, resolution of difficult water/sewer issues, and cost containment/per unit maximums, then the entity will have incurred a debt that must be paid back without hope of making it up on other projects because they will be likewise limited to less than the actual costs of the new project. I submit to you that an approach based on repayable project preparation advances is not reasonably suited to the restrictive and difficult financial and accountability environments within which private and public nonprofits must work. This approach would give even a large, well-established housing agency like RHI reason to pause; it should be of great concern to a fledgling start-up entity in an underserved area as envisioned in the bill.

The development of a small entity in an underserved area demands a switch in approach from reimburseable project-specific advances to an approach more closely resembling the Mutual Self Help grantee system, or similar 'core funding' grant mechanisms. I call to your attention the New York Rural Preservation Company support system as an excellent model. RHI itself was created in 1969 by successfully competing in a nationwide OEO competition that provided critical start-up monies. RHI was fortunate to continue to receive some annual core support grants from OEO's successor, the Community Services Administration, until its demise. The loss of such funding reduces the essential 'glue' that holds a housing nonprofit together, and I submit that new entities trying to serve underserved areas cannot undertake the risk involved in 'project advances' without some quantity of organizational glue to hold the whole effort together.

The amount of grant-like support needed to accomplish the objectives cited in the bill need not be large investments. Although

I hesitate to deal in averages since circumstances can vary greatly, we have found that, on average, a well-trained developer can sustain the development of up to three (3) rental projects at any one time if the projects are spaced or phased over the typical three-year start-to-finish cycle. Elderly projects are far easier to do than family projects. The small government investment during the first three to four years could be reduced in future years due to whatever reimbursements or development fees that may be available at closings.

The intent to use project advances in connection with homeowner loan programs such as Sec. 502's and 504's is probably impractical and certainly administratively complex, since each advance would appear to be a separate transaction, and there could be many such transactions occurring within a relatively short time span. The authority in a 'core grant' scenario could be extended to include these other programs. Also, I recall a highly successful FmHA Section 525 technical assistance program that, funded at low levels when it was operational, was defunded when funds dried up; it provided support for many of the packaging tasks contemplated in S. 566.

The objective should be to provide support for the maintenance of an appropriately-sized capacity in underserved rural areas sufficient to insure that programs are effectively delivered and supported in those areas by a community-based, responsive and responsible, local entity. I do not believe that it is the government's role to do more, although I would hope that, given the start, the entity could expand its services beyond FmHA programs.

FUNDING LEVEL AUTHORIZATIONS FOR FMHA PROGRAMS

Mr. Chairman, I want to say on behalf of other field-based rural housing agencies that we are very much encouraged that the long devastation of FmHA funding levels may have come to a halt. S. 566 provides for a modest increase in total funding for FmHA housing programs, and this is truly encouraging after the long drought. During these last few years we have borne witness to the sharply increasing numbers of low-income people living in rural areas who have been put on interminable waiting lists for assistance, and who have continued to live in overcrowded, excessively expensive, or unsafe housing or shelter, or, even worse, have been made homeless. The failure to maintain a reasonably funded housing program in recent years simply means that the numbers of people in dire need of some assistance is considerably larger than it would have been otherwise. This unfortunate reality is not easily addressed within the context of having to bring down a huge budget deficit. We take hope, however, in signs that the nation's priorities are being reordered to begin addressing these problems.

We have noticed in recent years that many of those who need assistance and would qualify for a FmHA program no longer even bother to apply because they know the funds are so short. Even within the context of these widespread acts of frustration that artificially depress FmHA backlogs of applications, the FmHA state offices for 5 of the 6 New England states have applications pending for 16 Section 515 projects totalling over $23 million in additional funding not covered by current allocations. The backlog in Section 502 applicants for whom funding is not available this year is over 4,000 with an additional funding allocation needed at over $320 million. These statistics from but a small part of rural America reflect something of the depth and severity of the problem.

More generally, according to 1987 Census Bureau data analyzed by the nonprofit research group, Public Voice, if you were to randomly talk with 100 urban residents and 100 rural residents, you are more likely to encounter a person living in poverty (16.9%) in the rural group than in the urban group (12.5%). The data from the Rouse Commission Report documents the stunningly higher incidence of inadequate housing found in rural areas than in urban areas. Although our population numbers are smaller, the greater incidence of housing problems are in the rural areas of the nation.

Mr. Chairman, we appreciate the fact that it is going to take some time to deal with the severity of the need in rural areas. S. 566, if it were funded as proposed, apparently would provide over $4 billion in new money above the current-year baseline. Although we support the initiatives proposed in the other Titles of the bill, we have what I believe are understandable concerns as to whether any fair share of that new money will ever effectively reach rural areas. Some of the mechanisms, and certainly most of the language, are clearly intended to address, and are designed for, urban areas. Even those portions that would use states as conduits do not provide any measure of assurance that states would distribute their resources fairly to rural areas. Massachusetts has an excellent delivery system to reach all rural areas in the state, of which RHI is a major regional provider; however, Massachusetts is among the top few states in the nation in its very strong support of housing programs for all of its citizens.

For many reasons, not the least of which is the long history of rural interests not being heard and not receiving a fair share of assistance, rural housing agencies strongly support the programs of the Farmers Home Administration. Although there is always a healthy state of criticism directed at FmHA by rural advocates, that criticism is intended as a highly constructive interplay designed to fine-tune what are generally well-designed programs especially suited and sensitive to the peculiar realities of rural environments. With some exceptions, such as, perhaps, the Small Cities program, and certain setasides such as the nonmetro portion of the the HUD 202 program, rural interests are generally suspicious and unconvinced that blocks of money made available in general, or programs that obviously were designed to work in metro areas, will ever contribute in any meaningful way to the solution of rural problems. Absent such assurances in the language and design of the other Titles, I must say that I believe the commitment to addressing the needs of the rural areas reflected in Title VII falls very short and is neither proportional to the additional sums anticipated in the bill as a whole nor designed to proportionally address the higher incidence of substandard and inadequate housing in rural areas.

CONCLUDING REMARKS

Mr. Chairman, I am well aware from years of experience that, since the vast majority of the population lives in areas described as suburban or urban, the minority voices of rural people are often difficult to pick out of the crowd. We are dispersed all over the countryside rather than in concentrated population centers. We are geographically and philosophically remote from the key centers of decision-making and program design and it is highly probable that those making the decisions came from an urban environment and have little understanding of the issues and problems peculiar to rural areas. We tend to be politically weak partly because of our fewer numbers and partly because our preferred rural style of living mitigates against organizing effectively. We must, therefore, Mr. Chairman, rely strongly on the statesmanlike quality of our leaders that permits them to temporarily set aside the numbers, look at rural needs seriously and carefully, and then insure that that significant part of America's population receives a fair share of the resources through programs that are designed to work in rural areas.

Mr. Chairman, I am very pleased to have been invited to testify before this subcommittee. It has been a number of years since I have appeared before a committee of Congress to discuss rural housing issues, and, quite frankly, there was little incentive to do so in the environment which existed in recent years. I sense some real change in attitudes and I certainly feel a renewed spirit and sense of hope for the future. Although I have been critical of much of the rural housing section, at the same time I would not have agreed to testify if I did not think that the time is right to do so. I applaud you on your significant initiatives and I stand ready to assist in any way I can to fashion a new and more vital response to housing issues in the 1990's.

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Senator CRANSTON. Mr. Honeycutt.

STATEMENT OF THOMAS W. HONEYCUTT, TAX CREDIT SPECIALIST, THE WEAVER COMPANIES, GREENSBORO, NC, REPRESENTING THE COUNCIL FOR RURAL HOUSING AND DEVELOPMENT

Mr. HONEYCUTT. Thank you, Senator.

My name is Tom Honeycutt, and I am with the Weaver Companies based in Greensboro, NC. I am President of the North Carolina Council for Rural Housing and a member of the Board of Directors of the Council for Rural Housing and Development on whose behalf I am testifying today.

I would like to discuss two major items today, one of which is addressed in the National Affordable Housing Act, and that is fund allocations under the HOP program, and one of which is not, the low-income occupancy on section 515 projects.

CRHD does support the concepts embodied in the HOP program. However, as we stressed in previous testimony, the HOP concept should not subsume the free-standing housing programs under title V of the Housing Act of 1949, namely, the section 502 home ownership program and the section 515 rural housing program.

Section 515 projects generally can only be located in communities of under 10,000 in population which simply do not have the capacity to administer a local housing program. We are next faced with the issue of whether there should be a setaside of HOP funds for non-SMSA areas.

MAKE AVAILABLE FUNDS FOR SMALL COMMUNITIES

There may be methods other than a strict quota to assure that States make available adequate funding to small communities. At the very best, language should be included in the bill or committee report to require States to take into account the housing needs of all areas of the State, including rural areas.

Further, because funding for rural areas will have to come out of State allocations, we deem it critical that States receive at least 50 percent of the fund allocations.

On our second point, the bill does not address the issue of extended low-income use restrictions on 515 projects. The House bill, H.R. 1180, would drastically change the present law by precluding prepayment for a 50-year period. We understand the congressional concerns that underlie the consideration of prepayment restrictions.

Certainly along with this provision of additional affordability housing one of the most vital housing issues is the preservation of our low-income stock. However, for there to be preservation, there must be such low-income housing in the first place.

In that regard, the committee should be aware of a few important facts.

First, as of September 30, 1988, profit motivated developers have produced 77 percent of the 14,678 section 515 projects under management. We do not mean to denigrate the nonprofit developer, but the fact remains that without private sector participation, only a fraction of the rural Americans now served by the 515 program would be living in decent housing.

Second, for there to be profit motivated developers, there must be an opportunity for a realistic market driven profit. If a developer is to participate in the program, this motivation does not come from cash flow on the project, which is limited to 8 percent of the 3 percent stated equity, a base which never inflates over time.

The low-income housing tax credit, although an essential incentive for a project to be built, is not a sufficient incentive to achieve the desired result. Indeed, those in Congress looking at this issue have reached the same conclusion. In the legislation to extend the low-income housing tax credit the sponsors realized that there had to be the incentive of appreciation to entice the necessary private investment.

Accordingly, under the now proposed legislation after a 15-year compliance period, the owner can sell at a price that takes into account the CPI increase supplied against the value of the building with that CPI being capped at 5 percent annually.

Third, the profit motivation is essentially not only to get the project built, but to assure its proper maintenance and management over time. The laws of economics and common sense dictate that an owner having an incentive for a profit on resale will taken better care of a building than does an owner who knows that no matter how good a job he or she does, there will be no possibility of profit at the end.

How then do we reconcile the desire to continue occupancy by section 515 eligible tenants for the life of the mortgage and to permit an owner to look at a reasonable profit on sale or refinancing of the project after a reasonable period.

We believe that this goal can be accomplished at virtually no expense to the Federal Government.

First, we believe that H.R. 1180 focuses on the wrong issue, prohibiting prepayment of the mortgage during the 50-year period. The goal sought in the bill is not the substitution of private financing for Government financing.

Indeed, this should be encouraged. Rather, the goal is to ensure occupancy by section 515 eligible tenants for the 50-year period. This goal can be met while still permitting prepayment by simply requiring the owner to maintain section 515 eligible occupancy for the 50-year period. Indeed, this is the exact mechanism employed for the 20-year lock-in now under present law.

We suggest that this mechanism be utilized here to assure occupancy for the mortgage term to low- or moderate-income families eligible under section 515 and can be accomplished by a simple change in section 502(c)(l)(b). Thus, an absolute prohibition on prepayment is not needed.

ESTABLISH A GUARANTEED LOAN PROGRAM

Second, we would recommend the establishment of a guaranteed loan program for the amount of the developer's equity in the project. Accordingly, after a specified period, such as 15 years, the developer could obtain a Farmers Home guaranteed second mortgage for 90 percent of the then equity in the project. This would permit the developer to borrow the cash needed for the necessary repairs to provide a return on capital at that time.

Because the loan would be guaranteed and not a direct loan, it would not be a debit against the ability of Farmers Home to utilize current funds.

We believe that these are constructive suggestions to accommodate both the twin aims of preserving the low- income property while offering the economic incentives for such property to be built in the first place.

As always, we stand ready to work with you and your able staff to craft this proposed solution into a solid legislative program.

Thank you for inviting us to participate today, and I would be happy to answer any questions.

Senator CRANSTON. Thank you very much.

[The prepared statement of Thomas W. Honeycutt follows:]

COUNCIL FOR RURAL
HOUSING AND DEVELOPMENT

TESTIMONY OF THOMAS W. HONEYCUTT
BOARD OF DIRECTORS, COUNCIL FOR RURAL HOUSING AND DEVELOPMENT

Before the Housing and Urban Affairs Subcommittee,
Senate Committee on Banking, Housing and Urban Affairs

June 21, 1989

My name is Thomas W. Honeycutt. I am with the Weaver Companies, based in Greensboro, NC, and a member of the Board of Directors of the Council for Rural Housing and Development on whose behalf I am testifying today. I am accompanied by Anna M. Moser, the Executive Director of CRHD.

As a matter of background, CRHD is a national association made up of 307 member organizations, including eighteen affiliated state associations. Since 1980 we have represented the interests of developers, managers and others involved in the Section 515 rural rental housing program through the Farmers Home Administration. We have appeared before this Committee many times in the past to speak about rural housing legislative issues.

We are pleased to have been invited to speak on S. 565, the National Affordable Housing Act. We have been honored to work with this Subcommittee on the legislation since its very conception. Two years ago we testified to the efficiency and effectiveness of the Farmers Home Administration rural housing program, particularly the Section 515 rural rental housing program, and we advocated maintaining the status quo for rural housing. We were pleased that Senators Cranston and D'Amato agreed with our viewpoint and proposed the reauthorization of rural housing programs with only minor modifications.

I would like to discuss two major items today, one of which is addressed in the National Affordable Housing Act - fund allocations under the HOP program, and one of which is not - low income occupancy in Section 515 projects.

THE HOP PROGRAM

As we have stressed in testimony to this Committee in the past, CRHD does support the concepts embodied in the HOP program as set forth in Title III of the National Affordable Housing Act to make funds available to states and localities who in turn would carry out housing programs best designed to meet the needs of the community. As we stressed in previous testimony however, the HOP concept should not subsume the freestanding housing programs under Title V of the Housing Act of 1949, namely the Section 502 homeownership program and the Section 515 rental housing program. Speaking for the Section 515 program, we are proud that this program provides housing for about 370,000 needy rural families on a well administered, cost-efficient basis. Therefore, we applaud your decision to keep Section 515 as a freestanding program and not to roll it into the HOP. This is of special importance because by law, Section 515 projects generally can only be located in communities of under 10,000 population, and these communities simply do not have the capacity to administer a local housing program.

We are next faced with the issue of whether there should be a set-aside of HOP funds for non SMSA areas. As you are aware, there is no such set-aside in the bill. Instead, funds are allocated 50% to states, and 50% to localities. This is a variation from the pattern established in the Housing and Community Development Act of 1974, providing at least a 20% fund allocation to localities outside of SMSAs.

We understand your concern that there be flexibility in fund allocation. Accordingly, there may be methods other than a strict quota to assure that states make available adequate funding to smaller communities. At the very least, language should be included in the bill, or committee report, to require states to take into account the housing needs of all areas of the state, including rural communities, in making their allocation of HOP funds. Further, because funding for rural areas will have to come out of state allocations, we deem it critical that states receive at least the 50% of fund allocations as provided in your bill and that the committee resist efforts to lower that figure.

LOW INCOME USE RESTRICTIONS

S. 565 does not address the issue of extended low income use restrictions on Section 515 projects. Under present law, an owner of a project funded after December 21, 1979 must maintain Section 515 income level occupancy for a twenty-year period.

However, the House bill, H.R. 1180, would drastically change present law by precluding prepayment for a 50-year period. Because we know that the issue of extended use restrictions is a prime interest to the Senate committee, we would like to share our thoughts on a possible mechanism to assure continued use while allowing an owner a fair return on his or her projects.

We understand the congressional concerns that underlie consideration of prepayment restrictions. Certainly, along with the provision of additional affordable housing, one of the most vital housing issues is a preservation of our low income stock. However, for there to be preservation of low income housing stock, there must be such low income housing in the first place. In that regard, this Committee should be aware of a few very important facts.

First, as of September 30, 1988, profit-motivated developers have produced 77% of the 14,678 Section 515 projects under management. We do not mean to denigrate the non-profit developer, but the fact remains that without private sector participation, only a fraction of rural Americans now served by the Section 515 program would be living in decent housing.

Second, for there to be profit-motivated developers, there must be an opportunity for a realistic market-driven profit if the developer is to participate in the program. This motivation does not come from cash flow on the project, which is limited to 8% of the 3% stated equity - a base which never inflates over time. The low income housing tax credit program, although an essential incentive for a project to be built, is not a sufficient incentive to achieve the desired result. Recently, under the securities law of Pennsylvania and Tennessee, a syndicator had to calculate and disclose what the return would be on the investor's equity assuming that after ten years there would be no return of the capital put in the project by the investor (see Exhibit A). In such case, the return to the investor would only be 8.14%. This below market return, especially considering the risks in investing in low income housing, can hardly induce wide-scale private sector participation.

Indeed, those in the Congress looking at this issue have reached the same conclusion. In the legislation to extend the low income housing tax credit, introduced by Senators Mitchell and Danforth in the Senate and Congressman Rangel in the House, the bill sponsors were very much concerned with the preservation issue. As originally proposed by the Mitchell-Danforth Task Force, after the fifteen-year credit compliance period, an investor would only be able to obtain a return of equity invested. However, on further reflection, the sponsors realized that there had to be the incentive of appreciation to entice the necessary private investment. Accordingly, under the now proposed legislation, after a 15-year compliance period, the owner can sell at a price that takes into account the CPI increase applied against the value of the building, with the CPI being capped at 5% annually.

Third, the profit motivation is essential not only to get the project built, but to assure its proper maintenance and management over time. Laws of economics and common sense dictate that an owner having an incentive for a profit on resale will take better care of a building than an owner who knows that no matter how good a job he or she does, there will be no possibility of profit at the end.

How then do we reconcile the desire to continue occupancy by Section 515-eligible tenants for the life of the mortgage, and to permit an owner to look to a reasonable profit on sale or refinancing of the project after a reasonable period. We believe that this goal can be accomplished at virtually no expense to the federal government.

First, we believe that H.R. 1180 focuses on the wrong issue in prohibiting prepayments of the mortgage during the 50-year period. The goal sought in the bill is not the substitution of private financing for government financing; indeed, this should be encouraged. Rather, the goal is to ensure occupancy by Section 515-eligible tenants for the 50-year period. This goal can be met while still permitting prepayment by simply requiring the owner to maintain Section 515-eligible occupancy for the 50-year period. Indeed, this is the exact mechanism employed for the 20-year lock-in now under present law. We refer the Committee to Section 502 (c)(1) of the Housing Act of 1949, which directs the Secretary to permit prepayment if the Secretary takes appropriate action to obligate the owner to "utilize the assisted housing and related facilities for the purposes specified in section 514 or 515".

We suggest that this mechanism be utilized here to assure occupancy for the mortgage term by the low- or moderate-income families eligible under Section 515, which can be accomplished by a simple change to Section 502 (c)(1)(B). Thus, an absolute prohibition on prepayment is not needed.

Second, we would recommend the establishment of a guaranteed loan program for the amount of the developer's equity in the project. Accordingly, after a specified period such as 15 years, the developer could obtain an FmHA guaranteed second mortgage for 90% of the then-equity in the project. This would permit the developer to borrow the cash needed for necessary repairs or to provide a return on capital at that time. Because the loan would be guaranteed and not a direct loan, it would not be a debit against the ability of Farmers Home to utilize its currently obligated funds to make loans for new projects. After an owner has obtained such a loan, he or she would not be able to obtain another such loan on the project for another 15-year period.

These options are not mutually exclusive. Indeed, the owner should have the choice of either being able to prepay the loan as long as the project remains rented to Section 515-eligible tenants for the length of the original mortgage, or to obtain the guaranteed equity loans every 15 years.

We believe that these are constructive suggestions to accommodate both the twin aims of preserving the low income property while offering the economic incentives for such property to be built in the first place. As always, we stand ready to work with you and your able staff to craft this proposed solution into a solid legislative program.

TRANSFER OF SECTION 502 INVENTORY FOR USE UNDER THE SECTION 515 PROGRAM

CRHD is in great support of Section 705 of the National Affordable Housing Act which allows for profit entities which have good records of providing low income housing under the Section 515 program to participate in the transfer of Section 502 inventory for use under Section 515. For profit entities are often in a better position to participate in such an effort to reintroduce low income housing units to the housing stock as they have the necessary experience and advanced management skills required for a successful transfer.

Thank you for inviting us to participate today. I would be happy to answer any questions.

EXHIBIT A

CALCULATION OF THE PRESENT VALUE OF A
$10,000 INVESTMENT IN BOSTON CAPITAL TAX
CREDIT FUND LIMITED PARTNERSHIP
DATE: MAY 16, 1989
LAST UPDATE: 16-May-89
PREPARED BY: L. CARGILL
FILE NAME: BCTCIRR

ASSUMPTIONS:

A. $10,000 CASH INVESTMENT PAID IN 1989
B. 10-YEAR HOLDING PERIOD

	YEAR	INVESTMENT	LOW-INCOME TAX CREDITS	% YIELD	VS.	RETURN OF INVESTMENT	NET INVESTMENT	RETURN ON INVESTMENT	% YIELD
	1989	$10,000	$1,500	15%		$1,500	$8,500	$0	0.00%
	1990		1,500	15%		1,500	7,000	0	0.00%
	1991		1,500	15%		1,500	5,500	0	0.00%
	1992		1,500	15%		1,500	4,000	0	0.00%
	1993		1,500	15%		1,500	2,500	0	0.00%
	1994		1,500	15%		1,500	1,000	0	0.00%
	1995		1,500	15%		1,000	1	500	50.00%
	1996		1,500	15%		0	1	1,500	150.00%
	1997		1,500	15%		0	1	1,500	150.00%
	1998		1,500	15%		0	1	1,500	150.00%
RESIDUALS	1998	$10,000				$0			
INTERNAL RATE OF RETURN				15%					8.14%

Senator **Cranston**. Let me get right in to a controversial matter now with my questions to you.

Currently when Farmers Home makes a section 515 loan, the loan cannot be prepayed for at least 20 years. Then after 20 years an owner who wants to prepayment must first gain Farmers Home approval. Farmers Home can also provide incentives to owners to keep their projects affordable.

Because 20-year low-income affordability has created such a serious problem, a number of proposals have been made to increase the length of time section 515 projects must remain affordable to low-income and very-low-income tenants.

I encourage each of you to discuss points of disagreement among you. I hope we can have some back and forth discussion on those points.

Let me put to you a few questions.

What do you believe is the longest feasible time that the low-income affordability of section 515 projects can be maintained if additional incentives are not provided?

INCENTIVES TO AVOID PREPAYMENT

What incentives, in addition to those now available, should be offered to owners to avoid prepayment?

At what point in a project's life should additional incentives be offered?

And, finally, legislation introduced in the House, H.R. 1180, would prohibit prepayment for the entire 50-year term of a section 515 loan. What do you think of that proposal?

Who wants to lead off?

Mr. Loza.

Mr. **Loza**. I'm not sure I have all the answers to all your questions, Mr. Chairman.

Our belief is that the 515 program's intent is to house low-income families. The incentives necessary for private developers is something that I think probably the developers are more equipped to respond to.

We think that the 50-year restriction is adequate in the sense that if a loan is made to house low-income families, then the loan should take care of those low-income families. If during the 50-year period low-income housing is no longer necessary, then obviously that takes care of that.

The 20-year restriction that is in the 1987 Housing Act begins to address that problem, and I think as difficult as that problem was, there were attempts to deal with it.

What has happened, however, is that that approach has become a very expensive proposition, and it also begins to take away from the existing 515 pot of money which also diminishes the ability to develop new housing.

The concern that we have at the Housing Assistance Council is that tenants not be displaced, that the stock of low-income housing not diminish, and now a new concern has come up with the 1987 Housing Act of not diminishing the amount of money available to build new 515 units because we are far from taking care of the need.

Whether through the tax credit or through guaranteed loans, developers are able to maintain the housing as low-income and to not diminish the low-income housing stock, that's fine as long as our two concerns aren't eliminated in the process and people are not displaced.

A few years ago we saw headlines and criticism of the program, particularly in the State of California where the market gets stronger and stronger and where old women in wheelchairs were being displaced. Ultimately what that does is harm the program. What we need to do is try to avoid those situations.

We need to do it in such a way that developers don't start getting away from the program. In fact, they do build between 75 and 80 percent of all the section 515 units. So their participation is crucial.

So even though I have not answered your question, I think the important thing for us is that displacement be avoided and the stock not be diminished and we don't start taking away from the existing 515 pot, which is limited as it is.

Senator CRANSTON. Yes, Mr. Coleman.

Mr. COLEMAN. Mr. Chairman, I think, as Mr. Loza said, it is important to keep the developer active in building section 515 units. Also, it's important to provide incentives to keep the developer interested in maintaining and managing those properties.

We have just recently taken over a 180-unit property. I realize we could all tell horror stories about older ladies in wheelchairs, being displaced from projects. This is not to say that some nonprofits do not do a good job, and it's not to say that all for profits do a good job, because that's not true either. But we have often noticed that unless there is some long-term incentive, that once that personality or person involved that got this all started is gone or they lose interest, that oftentimes there is not as much attention paid to it.

For instance, we have a property, that we just took over. The insurance was $10,000 deductible, and the premium was $42,000 a year. We have a $1,000 deductible by Aetna for $16,000 a year. Again, this is just one example. But what I'm saying is that the developer must be kept in for a long-term period with some incentive so that he not only builds the properties, but that he manages the properties well.

I agree that the developer understands the program was designed and is there for low-income people, but there does need to be periodically an opportunity for him to either transfer his interest, sell his interest or refinance. I think that period would probably be well to parallel the tax credit legislation, probably in 15 year intervals or in some like interim period. This gives the developer an opportunity to resyndicate and spend a portion of that money on rehabing and improving the properties, with the incentive of managing and maintaining that property. So I think it's important that there be some financial incentives for the developer.

Senator CRANSTON. Any other comments on those points?

Mr. HONEYCUTT. Senator?

Senator CRANSTON. Yes.

Mr. HONEYCUTT. We share the concerns of everybody on the panel I think dealing with the tenant problems of displacement and increasing rents.

However, our strongest motivation is, to put it very simply I think, is that without some sort of incentives we would probably not build if we were locked in for 50 years.

Senator CRANSTON. Mr. Martin.

Mr. MARTIN. I would agree with that statement. I think definitely one of the incentives in the past has been the length of the lock-in period and the ability to turn the project in the future, especially in California where we could see that inflation played an important role.

The members of the Rural Builders Council have kind of put their heads together on this issue and we are beginning to understand and appreciate the fact that the housing stock needs to say the way it is, that it should not be turned at the end of 15 or 20 or 50 years, but to stay in for the length of at least the life of the loan, 50 years.

The problem is what is the incentive then, and I think there are some ideas that have been jelled, and I hear those ideas being passed up and down this table, which I really am glad to hear, and that is that there should be some other way to at least take the investors out after a period of time. It's difficult to take these things to the market and attract investors when you tell them, look, we are going to be in this deal for 50 years. Most of them take their current age and add 50 years to it and start getting a little nervous.

In trying to come up with some ideas on how to deal with this in the marketplace, we liked the guaranteed loan idea, the equity loan I'm speaking of, where say every 15 years we could take the investors and give them their money back through some type of guaranteed loan or equity loan.

Senator CRANSTON. Let's move on, if we may, to the matter of particully deferred loans. The National Affordable Housing Act would allow Farmers Home to defer the repayment of up to 20 percent of the principal of a section 502 loan for certain very-low-income home buyers. If the deferral is too large and if it takes too long to repay, the family will not be accumulating equity in the homes.

According to a Congressional Budget Office analysis of the provision, families would generally begin repaying the deferral along with the rest of the interest and principal between the third and fourth year of the loan.

What is your assessment of that provision in the Cranston-D'Amato bill?

What contribution will it make to the quality of rural housing opportunities?

What refinements would you recommend to make the provision more useful while maintaining acceptable levels of default?

Who wants to tackle that one?

Mr. BERESH. As stated earlier, I think most rural housing providers out in the field strongly support the deferred payment loan approach because inherently it will extend that, as I termed it, the window of workability so that we can more effectively reach the very-low-income, which is the most important group of the lower income people to receive this assistance.

The risk that may be involved for the borrower, we believe, would be fairly minimal as long as an affordability index continued to be applied to their situation at annual recertification.

Most low-income borrowers, as the studies have shown, do increase their incomes and would be able to pick up more of the payments as the years go on. So the potential risk that may be involved would be the status of those very few numbers of people for whom their incomes may not have increased sufficiently to be able to not only pay the basic payments back, but to start picking up the deferred payment portion.

It's our feeling that in those rare circumstances where that might occur, that really there is nothing in our minds that is particularly sacred about a 38-year mortgage term, and that if in fact we do encounter that situation at the end of the term, then we believe that it should be possible to simply reamortize the balance of whatever that loan may be, because, if in fact that borrower is still in the program, it means that that borrower has been making steady payments toward the repayment of the mortgage.

And if that situation continues to serve that very-low-income person, then probably reamortizing whatever the balance of that loan is would continue—and probably in the cheapest way continue—to serve the needs of that very-low-income family.

Senator CRANSTON. Any other comments on that point?

Mr. COLEMAN. I think there is one thing that we need to address, and that is the very-low-income people oftentimes do not have the skills or the knowledge to maintain a home. This is one of the problems. These people might be better served through section 515.

Another point is that there is that group of people that do not get an increase in salary, or not a substantial increase in salary. The greatest fear I have of it, (if you've ever been out where these people live and work in the subdivisions you become knowledgeable of a lot of things that happen) is when one of these people goes to sell their house and finds out they have no equity. They go tell all their neighbors that I've lived here 2 or 3 years and I owe more now than I did when I bought the house. It has a real domino effect.

NEGATIVE AMORTIZATION

People begin to say they don't understand negative amortization and they don't understand some of the things we do. They suddenly realize they owe more money now than they did 2 or 3 years ago and the house is not worth that because they can go down the street and buy a new house for "X" many dollars less, and it has a real impact on the repossession rate in that subdivision. And to me that is one of the greatest fears I have. Maybe we have to recognize that there are some people that just cannot afford or do not have the skills to maintain a home and might be better served in 515's.

Senator CRANSTON. Mr. Loza.

Mr. LOZA. I would like to make a comment, Senator Cranston.

Ultimately the purpose of assisted housing programs is to put people in decent housing who would not have the opportunity otherwise.

There are situations in rural areas where, because of economics or for whatever reason, rental housing is not available. There are many families who should be in rental housing for a variety of reasons. There are many families who don't have that opportunity. Whether they are directed to a rental housing situation or a home ownership situation really depends on a variety of factors.

I think that when rental housing is not possible that we shouldn't deny many of these families an opportunity for decent housing, which is what these programs are for.

The Housing Assistance Council did a study of low-income families in the 502 program. We tracked about 900 families over a 5-year period, and what we found is that their incomes tended to go up. We found that their payments were almost always on time, and in many cases their payments were ahead of time. Many of them made sacrifices in other areas to keep their payments up.

There is the concern that some families' incomes may not go up and the deferred mortgage may just keep getting deferred over an extended period of time. We could argue that in a rental housing situation the family really never keeps anything of the rent that they pay out. If ultimately a family is in a home ownership situation through a defined mortgage then it is put in decent housing. I think that accomplishes what the assisted housing programs are supposed to accomplish.

Mr. MARSHALL. Could I just add one other bit from our experience, and that is that we did a brief study comparing family incomes and loan delinquency and found no correlation. In other words, the lowest income families were just as good in making their payments as the highest income families.

Senator CRANSTON. On the matter of the rural share of funding, the legislation we are considering would create, as you know, a new Housing Opportunity Partnership, HOP, program that will provide investment funds for local and State housing strategies. Half the HOP monies will go to the States, and each participating State will be responsible for distributing those funds equitably throughout the State in accordance with the State's housing needs.

We want to make sure that each participating State will allocate funds geographically in a way that takes full account of the housing needs of rural areas.

So, what measures of housing need reflect the special types of housing needs that there are in rural areas, and what refinements in the HOP legislation would you recommend to ensure that States allocate an appropriate share of housing assistance to rural areas?

Mr. Loza.

Mr. LOZA. We have heard before, Mr. Chairman, that the rural or nonmetro areas get a larger share of programs. If that's the case, then a 25-percent setaside should satisfy them because maybe that will lower what they perceive to be a very high, inordinate share going to nonmetropolitan areas.

In 1974 the Congress provided for a 20- to 25-percent nonmetro setaside on the low-income housing and community development programs. In 1983 HUD requested and the Congress granted a waiver. In subsequent years the amounts of money going to nonmetropolitan areas began to decrease as a result of that waiver. For example, 11 percent of the public housing money went to rural areas, 19 percent of the section 202 money went to rural areas, 17 percent of the section 8, existing section 8 and moderate rehab money went to rural areas and 18 percent of the voucher funds went to rural areas. In years when that setaside, established in 1974, was in place, HUD was providing around 20- to 25-percent assistance to rural areas.

So unless a particular setaside or a specific directive that so much money is going to go to the nonmetropolitan areas is there, experience shows that a fair share will not be provided.

The other thing is that it's said that the Farmers Home Administration provides housing assistance in the rural areas. The fact is that the Farmers Home Administration has population limits of up to 10,000 and in some cases 20,000. What is considered metro and nonmetro encompasses a much larger area, communities of up to 50,000. So you have a very large gap that in the nonmetropolitan areas that would not be served.

Senator CRANSTON. Any other comments.

[No response.]

If not, let me go on to this point.

Under the Act that we are considering Farmers Home assistance would be directed toward underserved areas. Those are rural counties and communities that are severely in need of housing assistance and that have not received a fair share of Farmers Home assistance in recent years. The bill would set aside 1 percent of the loan authority for Farmers Home home loan programs in 1990 and 2 percent in 1991.

So the questions on this point are:

What obstacles to rural housing development cause some areas to be underserved?

What level of setaside would you recommend for underserved areas?

And what is your assessment of the provision for underserved areas in our bill?

Mr. COLEMAN. Let me address part of that, in that almost every county—well, every county in the United States has access to a county supervisor in the Farmers Home Administration. We have found that those programs work best where there are two ingredients. One is a county supervisor who wants to build housing if there is a need and, two, if there is a developer out there to build it or self-help or someone to produce the housing.

I can't see where we would add anything to it in that we already have a county supervisor in those areas, and the money is available to those people, one, if there is a need and, two, if there is someone there to produce it whether nonprofit or forprofit.

I can't see where that would change a great deal even if we set aside money. It would only add a lot more paperwork and take up more time of people in the Farmers Home Administration who are already pretty well overburdened with it.

Senator CRANSTON. Any other comments?

Yes, Mr. Martin.

Mr. MARTIN. I agree with that comment.

Mr. **Beresh**. Mr. Chairman?

Senator **Cranston**. Yes.

Mr. **Beresh**. I think one of the great values of the concept of setaside is to focus attention, and certainly this would do that. It would focus attention on those 200 or so areas which statistically have been underserved.

I support what Mr. Coleman says in terms of the basic ingredients. If you've got a good Farmers Home county supervisor there and you have a development capacity there, then one can argue that the assistance is already out there and why isn't it being used. And I would suggest to you that the reason it's not is because just doing that is not going to produce the housing there.

I commented in my testimony that one of the things that bothers me a little bit is the fact that the bill would allow reallocation of those setaside amounts every year, and to me that takes the pressure off the kinds of efforts which would have to go into really resolving the problem.

Simply doing a setaside is not going to solve the problem. We are talking about sincere people, both Farmers Home Administration and local groups, focusing their attention on why it is that those areas are being underserved and then making sure that it happens. And one of those areas obviously is the development of that local capability to utilize the Farmers Home programs.

To some extent a county supervisor can do that, and I don't think anyone would argue that. We have excellent county supervisors that we know. But often the ability of a county supervisor or Farmers Home Administration officials in general to extend beyond that to really work with local communities is very limited, and one needs that local group, whether it's private or non-profit, you know, to be there to do it, and then the question becomes why isn't that happening in the underserved areas.

Mr. **Coleman**. Could I just tag onto that?

Senator **Cranston**. Yes.

Mr. **Coleman**. Maybe the reason it's not, and I know again in our areas of Arkansas, Oklahoma, and Kansas there are a number of areas that do not have any need for housing. As a matter of fact, there is a surplus of housing because of the farming and petroleum industry problems and these sorts of things. So I would assume that there is probably 10 percent of the area in our States where there are no houses built, but there are vacant farm home houses and other houses available.

So to say there are 200 areas not being served may be a little misleading in that there may not be 200 areas that need housing.

Mr. **Honeycutt**. I think the Farmers Home Administration has done a study that shows 250 areas around the Nation that they consider to be underserved.

One big question that we still have concerning this is if these markets that are to be targeted are going to be viable for the sites in terms of the economic viability long term of the site without extra assistance, such as a 100 percent rental assistance, and I think that is one reason that the smaller communities have had such a hard time competing with the communities that have the populations up near 10,000.

Senator **Cranston**. Mr. Beresh.

Mr. BERESH. One additional comment, Mr. Chairman, that occurs to me, and that is, if I understand the terms of the bill correctly, the determination of underserved areas is a determination which is separate from activation of the deferred payment loan program.

It seems to me that one of the primary resources that would be needed in an underserved area, or many of the underserved areas, is the ability to use the deferred payment loan program.

I think that points up the possibility that the restrictions that apply to what jurisdictions may use the deferred payment loan program should be expanded or altered somewhat and not be based simply on the failure to use the 10 percent setaside in a particular jurisdiction.

It's possible that an underserved area could be resting in a jurisdiction which statewide used all of its very-low-income allocation, and therefore that device would not be available in the underserved area, and that seems to be a contradiction.

Senator CRANSTON. Thank you very much.

One final point. The act would make project preparation advances available to support nonprofit housing development in underserved areas. Those advances would cover up to 80 percent of the cost of preparing an application for Farmers Home financing, and they would be repaid from the project financing when the project is approved.

What is your assessment of the benefits and potential drawbacks of these project preparation advances, and what characteristics of housing development in rural areas would make these advances useful?

Mr. Beresh.

Mr. BERESH. RHI is not the type of entity that is envisioned in the bill, but we once were. We were created in 1969, fortunately, because at that time there were grant opportunities available through the Office of Economic Opportunity, and then the Community Services Administration.

But we certainly recall the basic essentials that result in creating a local capacity, and we believe that the project preparation advance proposal would be somewhat risky even for a large organization like RHI which has supplementary resources to support the costs which would be uncovered in a project preparation advance.

You have issues in there of what the Farmers Home Administration would ultimately allow because that is part of the definition, and there often are arguments with regard to what costs can be included and what costs cannot be included, and the approach tends to be a very conservative approach.

Therefore, the local entity could very well be looking at a situation where the true total costs of developing that preapplication are not covered by the takeout or the reimbursement at the time of closing. I realize the bill says it's going to only pay for 80 percent to begin with.

I would suggest to you that the real costs exceed just the 80 percent because there are going to be costs there that aren't going to be covered through that mechanism at all.

I would say that a new startup organization located in an underserved area would be taking on a substantial amount of risk by agreeing to such a proposal as it's currently stated. Something broader and somewhat deeper is needed in order for it to work I believe.

Senator CRANSTON. Yes.

Mr. HONEYCUTT. I believe that is somewhat addressed in making the opportunity for a nonprofit to go in with a profit and somehow help that situation out for the less experienced.

I don't think we would argue with the concept of this. We wonder, however, how the nonprofits would respond, especially if you look at the low-income housing tax credit that has been used. There was 10 percent set aside, and in a lot of States the nonprofits haven't responded and used their setaside.

Senator CRANSTON. Mr. Coleman.

Mr. COLEMAN. If we were not spending all the money, there probably would need to be some additional incentive to try to get the money spent. But, I would dare say that if the budget was doubled this year that the present delivery system would probably use up 200 percent of the present allocation. So you wonder if there is any necessity to help provide for someone else to try to package because all the money is being used.

Senator CRANSTON. Mr. Marshall.

Mr. MARSHALL. Perhaps in some of the underserved areas where there is not an existing nonprofit that is competent, the concept that we advanced of a small capacity building grant to help get a legitimate nonprofit started in those underserved areas might serve better than this advance program.

Senator CRANSTON. Terry, I have just finished with this panel on rural housing, and then we are going on to Indian housing. Do you have any comments or statements or questions?

Senator SANFORD. Well, thank you very much, and I apologize for not being here. You know the problems of the Senate.

Senator CRANSTON. No. What problems are you talking about? [Laughter.]

Senator SANFORD. The only person I know of who can be in three or four places at one time is Senator Cranston. [Laughter.]

I have a statement that I would like put in the record because I'm certainly grateful to all of you for coming and testifying.

Mr. Chairman, you know I'm very much interested in rural housing and certainly for that matter Indian housing, and I commend you for all you have done. I want to keep making the point that we need to do more for rural housing.

I represent a State where 45 percent of the people live in what would be defined as rural areas, and a great many of those little towns don't define themselves as rural anyhow.

The nonmetropolitan areas now have a higher rate of poverty than the metropolitan areas, and certainly the kind of poverty and the kind of lack of housing is something that we must give I think more intense attention to, and I have prepared, as you know, some additional legislation that I hope the Committee will consider that simply shores up the various things that enhance housing for rural areas, and especially in rural areas where poverty is an added obstacle to be overcome.

Just so you will know what I'm talking about, as the Chairman and the staff already know about, I'm proposing that we provide modest funding increases for rural housing programs administered by the Farmers Home Administration, that we direct Federal assistance to underserved rural areas with poverty rates of over 20 percent and substandard housing over 10 percent, that we retain the deferred mortgage program proposed in the National Affordable Housing Act for section 502 home ownership program, that we maintain the permanent affordability of rural rental housing projects, that we encourage participation of the Farmers Home Administration in private-public partnerships and that we create a guaranteed loan program to address the absence of available mortgage credit for low- and moderate-income individuals in rural communities.

So the plan generally that I propose would simply sharpen and supplement the rural housing provisions that the Senator and the committee have already included. I think this is not at all incompatible. It simply strengthens the hand and heightens the concern of people that are especially involved with the rural housing.

It will not address a great many things, and we are not taking away from the States a great many initiatives that some States are following, but I hope that this will help us provide a bill that covers and gives immediate help to sections of the country that have indeed been neglected and having perhaps been looked on as a problem quite as serious as the inner core city problems, and maybe they aren't, and maybe they are.

But in any event, they are problems that I believe without a great deal of additional money, and primarily with a slightly different focusing that we can do more for these rural areas and especially rural poverty areas.

I thank you very much, Mr. Chairman.

[The statement of Senator Sanford follows:]

OPENING STATEMENT OF SENATOR TERRY SANFORD

Senator SANFORD. Mr. Chairman, I thank you for holding this critical hearing today on the rural and Indian housing components of the National Affordable Housing Act. I commend you and Senator D'Amato for introducing legislation that provides a creative and comprehensive approach to Federal Housing Assistance. We now have the opportunity to revitalize Federal housing efforts and to strengthen the housing programs administered by both HUD and the Farmers Home Administration.

As I represent a State in which 45 percent of the residents live in rural areas, I am deeply interested in the impact of this bill on rural housing. Rural communities throughout the Nation face a severe housing crisis which is compounded by declining natural resource and agricultural economies. As the National Housing Task Force succinctly stated, "Nonmetropolitan areas now have a higher rate of poverty and unemployment than metropolitan areas—and the incidence of inadequate housing is higher."

According to the task force, some 4.3 million low-income households, living in small towns and rural areas, have a serious housing problem. Two million households live in substandard housing, while 1.4 million households are burdened with excessive housing costs. In addition, over 200 nonmetropolitan counties in this country have poverty rates above 20 percent and substandard housing rates above 10 percent. I am sad to say that 12 of these counties are in my home State.

The Federal response to the rural housing crisis has been both inadequate and irresponsible. The Federal Government has cut funding for rural housing programs by almost 50 percent since fiscal year 1985, reducing unit production from about 100,000 to 55,000 units per year. These drastic reductions have created significant backlogs in demand for the housing programs administered by the Farmers Home Administration.

I am pleased that this funding trend has been reversed by the fiscal year 1990 budget resolution. Through the efforts of Senator Sasser, Senator Cranston, and a number of other Banking and Budget Committee members, we provided a funding increase of almost $200 million for rural housing programs.

I commend the Chairman for his pledge to include this funding increase in the authorization of the National Affordable Housing Act. I also support the general concept of the deferred mortgage and underserved areas programs included in the bill. These programs will direct Federal assistance to the neediest individuals and communities within rural America.

However, I do not believe that the rural housing section of this bill adequately addresses the needs of rural communities. If the National Affordable Housing Act is to be a comprehensive expression of Federal housing policy, it must place a stronger emphasis on rural housing—and specifically on the programs administered by the Farmers Home Administration. I applaud the work that has been accomplished by the Chairman and Senator D'Amato—and I appreciate their deep support for rural housing programs. Therefore, I am confident that we can work together to ensure that the rural housing component of the bill receives additional emphasis.

As a step in this direction, I plan to introduce a rural housing bill, immediately after the 4th of July session break, that will build upon the concepts of the National Affordable Housing Act and address the rural housing crisis in a comprehensive fashion.

My proposal will do the following:

Provide modest funding increases for rural housing programs administered by the Farmers Home Administration;

Direct Federal assistance to underserved rural areas with poverty rates over 20 percent and substandard housing rates over 10 percent;

Retain the deferred mortgage program proposed by the National Affordable Housing Act for the section 502 homeownership program;

Maintain the permanent affordability of rural, rental housing projects;

Encourage participation by the Farmers Home Administration in private-public partnerships;

Create a guaranteed loan program to address the absence of available mortgage credit for low and moderate income individuals in rural communities; and

Correct technical problems in Farmers Home Administration programs.

Senator **Cranston**. Thank you, Terry.

I want to thank all of you very much for your thoughtful testimony, and I particularly thank Mr. Martin and Mr. Marshall for coming all the way across the country from the great State to be here with us today.

Senator **SANFORD**. You just say the great State. (Laughter.)

Senator **CRANSTON**. Right.

I hope you will all continue to work with us as we refine the legislation.

I thank you very much.

At this time I want to call up the members of today's second panel on Indian housing.

I welcome each of you again. I know that you were just down in Tampa, Florida at a conference to discuss the problems of Indian housing, and I appreciate very much you being here after traveling so much last week.

May we start off with you, Virginia Spencer?

Let me remind you of the 5-minute rule. When the yellow light comes on, you've got about ½ minute, and the red light means you're out of time.

STATEMENT OF VIRGINIA SPENCER, EXECUTIVE DIRECTOR, NATIONAL AMERICAN INDIAN HOUSING COUNCIL, WASHINGTON, DC

Ms. **SPENCER**. Mr. Chairman and Members of the Senate Housing and Urban Affairs Subcommittee, it is a pleasure to appear before you today to testify on Indian housing issues and the National Affordable Housing Act.

My name is Virginia Spencer, and I am the Executive Director of the National American Indian Housing Council. The council is a 15-year old association of Indian Housing Authorities.

On behalf of the council I wish to thank you, Senator Cranston, for your sponsorship and support of the Indian Housing Act of 1988 and commend the committee on the production of the National Affordable Housing Act.

HOUSING NEEDS OF AMERICAN INDIANS AND ALASKAN NATIVES

The Indian Housing Act of 1988 provided separate statutory authority for the mutual help home ownership program. This is only the beginning of addressing the housing needs of American Indians and Alaskan Natives. While housing assistance has been available to other Americans since 1937, it wasn't until 1961 that the then Department of Housing and Urban Development administratively determined that Tribal Governments were eligible to form Housing Authorities and provide housing assistance to their members.

Today almost one in four Indian and Alaskan Native families lives in substandard housing. That means that they need rehab of their existing home or need new homes of their own. Twenty-two thousand Indian families are still in need of basic water and sanitary facilities, basic sewer systems.

The authorizations for appropriations in the National Affordable Housing Act are inadequate to meet the need in Indian Country. A minimum level of 6,000 units per year until the need of almost

100,000 families is met is urgently requested, and I appreciate your comments about additional funding.

Between 1987 and 1988, according to the Bureau of Indian Affairs, the need for housing assistance increased by 6 percent. That's just in 1 year. Indian families will double and triple up rather than let family members stay out in the cold. Homelessness in Indian Country means severe overcrowding which needs to be addressed with new housing.

Due to low incomes, remote rural locations and the trust status of Indian land, tribes need Federal assistance to help their members obtain decent housing. Your help in considering some additions and changes to the National Affordable Housing Act would be most appreciated.

The National American Indian Housing Counsel requests an amendment to section 509 of title V of the Housing Act of 1949 to encourage Indian people to participate in the Farmers Home Administration programs. The amendment would require Farmers Home to transfer a defaulted home loan to an eligible tribal member, IHA or the tribe. This would open up more opportunities for Indians on trust land to obtain housing through Farmers Home.

In the last 5 years Farmers Home has made less than ½ of 1 percent of their 502 and 504 loans and grants to Indians. So that is not a very good record, and maybe this amendment would help in that area.

A number of issues will be mentioned today in the testimony provided by other members of the panel.

I would appreciate very much your consideration and help in addressing these issues which we believe will make the existing programs work better and more fairly. The issues include providing relief for old mutual help participants, parity in the allowable expense levels, changing the deductions allowed for family members and elderly, rolling the rent back from 30 percent to 20 percent, lowering the age of Indian elderly to 55, as with the BIA programs, allowing flexibility in the income deductions, adding turnkey III to the Indian Housing Act, providing funding for continuing technical assistance to Indian Housing Authorities, including Indian tribes as eligible for all assistance under the Stewart B. McKinney Act and providing funding to fight substance abuse in Public and Indian Housing Authorities.

I also strongly urge the committee to make Indian tribes eligible for the new programs proposed for authorization under the National Affordable Housing Act. Under title I, section 104, definitions, Indian tribes should be included either under (1) as a "unit of general local government," or (2) as a "State." Without this designation, a segment of the population in need will be excluded from new housing opportunities as they become available.

Senator McCain of the Select Committee on Indian Affairs has also recommended a 1 year Commission on Indian and Alaska Native Housing to explore alternative funding for American Indian housing assistance.

NAIHC endorses this idea and hopes that the committee will support and sponsor an Indian Commission on Housing.

Senator Cranston and members of the Housing and Urban Affairs Subcommittee, I appreciate the opportunity to testify today, and I hope that you will hold the hearing record open for additional comments.

I thank you again for your support of Indian and Alaska Native housing.

Senator CRANSTON. Thank you very much, and we certainly will be glad to have additional comments within two weeks if you can get them in.

[The prepared statement of Virginia Spencer follows:]

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TESTIMONY OF VIRGINIA E. SPENCER,

EXECUTIVE DIRECTOR

NATIONAL AMERICAN INDIAN HOUSING COUNCIL

BEFORE THE

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

JUNE 21, 1989

Mr. Chairman and members of the Senate Housing and Urban Affairs Subcommittee, it is a pleasure to appear before you today to testify on Indian housing issues and the "National Affordable Housing Act." My name is Virginia Spencer and I am the Executive Director of the National American Indian Housing Council (NAIHC). The Council is a fifteen year old association of Indian housing authorities (IHAs). On behalf of the Council, I wish to thank you, Senator Cranston, for your sponsorship and support of the Indian Housing Act of 1988.

The Indian Housing Act of 1988 (now Public Law 100-358) provided separate statutory authority for the Mutual Help Homeownership Program. This is only the beginning of addressing the housing needs of American Indians and Alaska Natives. While housing assistance has been available to other Americans since 1937, it wasn't until 1961 that the then Department of Housing and Urban Development administratively determined that tribal governments were eligible to form housing authorities and provide assistance to their members. Today, almost one in four Indian and Alaska Native families needs rehabilitation of their existing home or a home of their own (i.e., new construction).

The authorizations for appropriations in the National Affordable Housing Act are inadequate to meet the need in Indian Country. A minimum level of 6,000 units per year, until the need of almost 100,000 families is met, is urgently requested. Between 1987 and 1988, according the to Bureau of Indian Affairs, the need for housing assistance increased by six percent! Indian families will double and triple up rather than let family members stay out in the cold. Homelessness in Indian Country means severe overcrowding which needs to be addressed with new housing. Due to low incomes, remote rural locations, and the trust status of Indian land, tribes need Federal assistance to help their members obtain decent housing. Your help in considering some additions and changes to S. 565 and S. 566 will most appreciated.

The National American Indian Housing Council requests an amendment to Section 509 of Title V of the Housing Act of 1949 to encourage Indian people to participate in the Farmers Home Administration (FmHA) programs. The amendment would require FmHA to transfer a defaulted home loan to an eligible tribal member, IHA, or the tribe. This would open up more opportunities for Indians on trust land to obtain housing.

A number of issues are mentioned in the testimony provided by other members on the panel today. I would appreciate very much your consideration and help in addressing these issues which we believe will make the existing programs work better and more fairly. The issues include providing relief for Old Mutual Help participants, parity in Allowable Expense Levels, changing the deductions allowed for family members and elderly, rolling the rent back from 30% to 20%, lowering the age of Indian elderly to 55, allowing flexibility in income deductions, adding Turnkey III to the Indian Housing Act, providing funding for continuing technical assistance to IHAs, including Indian tribes as eligible for all assistance under the Stewart B. McKinney Act, providing funding to fight substance abuse in public and Indian housing authorities.

I also strongly urge the Committee to make Indian tribes eligible for the new programs proposed for authorization under the National Affordable Housing Act. Under Title I, Sec.104, Definitions, Indian tribes should be included under (1) as a "unit of general local government," or (2) The term "State" means Indian tribal governments, etc. Without this designation, a segment of the population in need will be excluded from new housing opportunities as they become available.

Senator McCain of the Select Committee on Indian Affairs has also recommended a one year Commission on Indian and Alaska Native Housing to explore alternative funding for Native American housing assistance. NAIHC endorses this idea and hopes that the Committee will support and sponsor an Indian Commission on Housing.

Senator Cranston, and members of the Housing and Urban Affairs Subcommitee, I appreciate the opportunity to testify today. I hope that you will hold the hearing record open for additional comments, and thank you again for your support of Indian and Alaska Native housing.

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Additional Comments on S.566 from Virginia E. Spencer, Executive Director, National American Indian Housing Council

The purposes of the National Affordable Housing Act include helping families save for a down payment on a home, retain Federally assisted low-income housing, extend and strengthen partnerships among agencies and groups in the production and operation of housing, expand Federal rental assistance and increase the supply of supportive housing for those with special needs. Among the new programs proposed to meet these goals are the amendments to FHA, creation of the "HOME" Corporation, and the Housing Opportunity Partnership (HOP) Program. Indian tribes and their members need to be made eligible to participate in all these programs.

For example, under Title I, State and Local Housing Strategies would not include Indian reservations unless specifically required to do so since these governments do not have jurisdiction on Indian trust lands and are reluctant to share resources when they have no jurisdiction. Indian tribes should be encouraged to develop housing strategies for their specific jurisdiction and coordinate with the states and localities where appropriate.

Under Title II, new homeownership opportunities need to be available to Indians living on trust land. While probably few would have any IRA or 401(K) funds to use, they would certainly benefit from the lower down payments proposed.

Indian tribes need to be included as eligible for programs authorized under the HOME corporation. While matching funds as required under the Housing Opportunity Partnership (HOP) may be difficult or impossible for most tribes, some may be able to match the requirements and should be included to participate. A revolving trust fund for tribal housing is an excellent method of recycling funds over and over.

Few IHAs are able to use the Section 8 or voucher program due to the lack of rental housing in remote areas, but there are some who use these programs, particularly in Oklahoma, and where reservations come close to nearby towns. Thus, Indian tribes (and IHAs) should be eligible to participate in the proposed rental assistance program. Every method of housing assistance should include Indian tribes, including supportive housing for the elderly and handicapped. In addition, eligibility for all programs authorized under the McKinney Act is needed for the homeless in Indian country.

Your assistance in including Indian tribes for new housing opportunities is greatly appreciated.

VES/jln

Senator CRANSTON. Mr. Key.

STATEMENT OF TED KEY, EXECUTIVE DIRECTOR, CHICKASAW NATION HOUSING AUTHORITY, ADA, OK, REPRESENTING OKLAHOMA INDIAN HOUSING ASSOCIATION

Mr. KEY. Honorable Chairman, my name is Ted Key. I am the President of the Oklahoma Housing Association, and represent the concerns then of 26 Indian Housing Authorities located in the States of Texas, Oklahoma, Kansas, and Louisiana.

I thank you for this opportunity to provide testimony to the subcommittee concerning the National Affordable Housing Act.

First, you need to know a little bit about the status of the Indian people that I represent. In my area there are well over 200,000 Indian people, which is approximately 62,000 families, most of which live in Oklahoma, and that is second in number only to your State of California.

According to the Oklahoma State Unemployment Security Commission, the Indian unemployment rate in Oklahoma is 14.1 percent, and that is compared to the State's general population unemployment of 6.2 percent. So more than twice higher.

Complicating this high incidence of unemployment among the Indian people is a lack of adequate affordable decent housing. While over 25 percent of the total Indian housing stock that has been provided through the Department of Housing and Urban Development have been built in my region, there still remains today over 6,000 Indian families, which is almost 1 in every 10 families in my region on our documented approved waiting lists which need a decent place to live in my region alone today.

FEDERAL BUDGET EXCLUDES INDIAN HOUSING FUNDS

The current Federal 1990 budget being proposed by the Administration does not include any funds for Indian housing for these 6,000 homeless or underhoused Indian families, much less those from other regions across the United States, which is why it becomes so paramount that the Senate Subcommittee address this travesty of a basic human need of a safe, decent and sanitary place to live by approving S. 566.

According to the 1980 Census, 23.3 percent of the Indian occupied homes lacked either basic plumbing facilities or were overcrowded, four times the proportion of the country as a whole. Through a 1987 survey 2 years ago of Indian housing needs taken by the Bureau of Indian Affairs, the BIA, one household in four, 28.6 percent to be exact, had no housing of its own or either lived doubled up with relatives of friends or in cars, tents or other temporary shelter.

In all, the BIA found a need for 93,000 new or substantially rehabilitated homes for Indian families, and that was just 2 years ago.

Those of us concerned with Indian housing nationally are aware of the monumental financial difficulties of this country, and over the past have taken our somewhat disproportionate cuts along with the rest of the country. However, to totally devastate such an urgently needed program is both shameful and inappropriate.

If the Indian housing program could be maintained by providing annual funds to build 3,000 new units next year, it would not make a problem this large go-away. However, it would at least help us to tread water while the Nation's financial problems are being addressed further.

In dollars personally that relates to a lot of money, but when viewed from a national perspective given the amount of funds available, this request is a drop in the bucket, but that would be used to address a great need all across this country.

In conclusion, and on behalf of the 26 Indian Housing Authorities from my region, and even greater, the 200,000 Indian people I represent, and the 6,000 homeless Indian families, I wish to thank you for your past support of Indian housing programs and request your continued support in the future by approving S. 566 and increasing the number of new Indian housing units to at least 3,000 units in 1990.

Thank you.

Senator CRANSTON. Thank you very much.

[The prepared statement of Ted Key follows:]

TESTIMONY

PRESENTED BY

TED KEY

PROVIDED TO THE

SENATE SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

NATIONAL AFFORDABLE HOUSING ACT

(S.565 AND S.566)

UNITED STATES SENATE

JUNE 21, 1989

Honorable Chairman and members of the Senate Subcommittee on Housing & Urban Affairs, my name is Ted Key, and I am the President of the Oklahoma Indian Housing Association, which represents the HUD Indian Housing program concerns of the 26 Indian Housing Authorities located in the States of Texas, Oklahoma, Kansas, Arkansas, and Louisiana. I thank you for this opportunity to provide testimony to the Subcommittee concerning the National Affordable Housing Act (S.565 and S.566).

First you need to know a little about the status of the Indian people I represent. In my area, there are well over 200,000 Indian people (approximately 62,000 families) most of which live in Oklahoma, second in number only to the State of California. According to the Oklahoma State Employment Security Commission, the Indian unemployment rate is 14.1% as compared to the state's general population (all races) unemployment rate of 6.2%. Complicating the high incidence of unemployment among Indians is the lack of adequate, affordable, decent housing. While over 25% of the total Indian housing units provided through the Department of Housing and Urban Development have been built in my region, there remains today over 6,000 Indian families (almost 1 in every 10 Indian families) on documented approved waiting lists needing a decent place to live in my region alone.

The current Federal 1990 Budget being proposed by the Administration does not include any funds for Indian housing for these 6,000 homeless or under-housed families much less those needed in other regions of the United States, which is why it becomes so paramount that the Senate Subcommittee address this travesty of a basic human need; a safe, decent, and sanitary place to live by approving S.565.

According to the 1980 Census, 23.3% of the Indian occupied homes either lacked basic plumbing facilities or were overcrowded, four times the proportion for the country as a whole. Through a 1987 survey of Indian housing needs taken by the Bureau of Indian Affairs (BIA), one household in four (28.6%) had no housing of its own, and either lived doubled up with relatives or friends, or in cars, tents, or othe temporary shelter. In all, the BIA found a need for 93,000 new or substantially rehabilitated homes for Indian families.

Those of us concerned with Indian Housing Nationally are aware of the monumental financial difficulties this country is experiencing, and over the past have taken our somewhat disproportionate cuts along with the rest of the country; however, to totally devistate such an urgently needed program is both shameful and inappropriate. If the Indian Housing Program could be maintained by providing annual funds to build 3,000 new units next year, it would not make a problem this great disappear; however, it would at least help us to "tread water" while our Nation's financial problems are being addressed. In dollars that relates to a lot of money, but when viewed from a national perspective, given the amount of funds available, this request is a "drop-in-the-bucket". But that "drop" would be used to address a great need all across this country.

In conclusion, and on behalf of the 26 Indian Housing Authorities from my region, and even greater the 200,000 Indian people I represent, I wish to thank you for your past support of Indian Housing Programs and request your continued support in the future by approving S.565 and S.566 and increasing the number of new Indian housing units to at least 3,000 units in 1990.

Ted Key

Ted Key, President
Oklahoma Indian Housing Association

Senator CRANSTON. Mr. Jones.

STATEMENT OF RON JONES, EXECUTIVE DIRECTOR, SISSETON-WAHPETON HOUSING AUTHORITY AGENCY VILLAGE, SD

Mr. JONES. Chairman Cranston, my name is Ron Jones and I'm the Executive Director of the Sisseton-Wahpeton Housing Authority in the State of South Dakota, and a member of the National American Indian Housing Council.

Indian Housing Authorities develop and manage housing units financed under the Department of Housing and Urban Development's Indian Housing Programs.

I am honored to have this opportunity to testify on Senate Bill 566, the National Affordable Housing Act. This new housing bill includes a number of important opportunities for Americans to realize decent housing at an affordable cost.

In 1988 the BIA found a need to assist over 98,000 Indian families to obtain decent housing. That figure in 1970 was at 63,000. In the past 8 years the program has been cut drastically by 80 percent. Yet more families than ever are without standard housing.

The authorization for appropriations in this bill for the HUD Indian Housing Program would fund only 1,250 units per year for the next 2 years. Additional funding is absolutely essential for the American Indian and Alaskan Natives if they are ever to obtain decent housing.

Even in California, Senator Cranston, the 1980 Census showed 13 percent of the Indian population lived in substandard conditions compared to 8 percent of the total population.

In South Dakota 38.5 percent of the Indian population live in substandard housing. An additional authorization of units for this program would be most welcome.

The NAIHC membership requests funding for 6,000 units per year until this need is met. Since this amount of funding may not be available for the HUD program, I request your assistance in helping us to find additional housing opportunities.

For example, NAIHC is encouraging tribes to participate more in other housing programs such as those available from the Farmers Home Administration. Since many tribal people hesitate at agreeing to FmHA's mortgages on tribal or trust land, NAIHC recommends the following amendment that would clarify that FmHA rural housing loans would not lead to alienation of trust land.

I request you consider the following amendment.

RECOMMENDED AMENDMENT

Section 509 of title V of the Housing Act of 1949 is amended by changing subsection (d) to (e) and adding a new subsection (d) as follows:

"(d) the Secretary shall, in the event of default involving a security interest in tribal allotted or trust land, only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or an Indian housing authority. Should the Secretary subsequently proceed to liquidate the account he/she shall not sell, transfer or otherwise dispose or alienate the property except to the aforementioned entities."

This amendment would encourage more Indian people to participate in the FmHA program and provide a valuable, almost untapped resource. For example, over the past 5 years less than ½ of 1 percent of FmHA's 502 and 504 loans went to Indians.

An additional method of assisting tribes would be to create a revolving loan fund where Indian Housing Authorities would construct units and recycle collected payments for additional housing projects. The establishment of such a fund would have to be congressionally mandated and funded. However, over time the fund could be self-sustaining.

I would also like the committee to consider some additional changes to the HUD Indian housing programs.

I have them listed here in my testimony, 1 through 11.

Senator Cranston and members of the Housing and Urban Affairs Subcommittee, I appreciate this opportunity to testify on these issues, and I hope that you give them consideration.

I want to thank you again for your support of housing assistance to the American Indians and Alaskan Natives, and for this opportunity to testify on the National Affordable Housing Act.

Senator CRANSTON. Thank you very much. It's good to have you with us, and we certainly will consider very carefully your proposals.

[The prepared statement of Ron Jones follows:]

TESTIMONY

BEFORE THE

HOUSING AND URBAN AFFAIRS SUBCOMMITTEE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

by

RON JONES
EXECUTIVE DIRECTOR
SISSETON-WAHPETON HOUSING AUTHORITY
AGENCY VILLAGE, SOUTH DAKOTA

JUNE 21, 1989

TESTIMONY OF RON JONES, EXECUTIVE DIRECTOR

SISSETON-WAHPETON HOUSING AUTHORITY

Chairman Cranston, and members of the Senate Housing and Urban Affairs Subcommittee, my name is Ron Jones and I am Executive Director of the Sisseton-Wahpeton Sioux Housing Authority in South Dakota and a member of the National American Indian Housing Council. Indian housing authorities develop and manage housing units financed under the Department of Housing and Urban Development's Indian Housing Programs. I am honored to have this opportunity to testify on S. 566, the "National Affordable Housing Act." This new housing bill includes a number of important opportunities for Americans to realize decent housing at an affordable cost.

In 1988, the Bureau of Indian Affairs found a need to assist over 98,781 Indian families obtain decent housing. In 1970, that figure was 63,000. In the past eight years, the program has been cut by 80 percent! Yet, more families than ever are without standard housing. The authorization for appropriations in this Bill for the HUD Indian Housing Program would fund only 1250 new homes per year for two years. Additional funding is absolutely essential for American Indian and Alaska Natives if they are ever to obtain decent housing. Even in California, Senator Cranston, the 1980 Census showed 13% of the Indian population lived in substandard conditions compared to 8% for the total population. In South Dakota, 38.5% of the Indian population is ill-housed. An additional authorization of units for this program would be most welcome.

The NAIHC membership requests funding for 6,000 units per year until the need is met. Since this amount of funding may not be available for the HUD Program, I request your assistance in helping us to find additional housing opportunities.
For example, NAIHC is encouraging tribes to participate more in other housing programs such as those available from the Farmers Home Administration (FmHA). Since many tribal people hesitate at agreeing to FmHA's mortgages on tribal or trust land, NAIHC recommends the following amendment that would clarify that FmHA rural housing loans would not lead to alienation of trust land. I request your consideration of the following amendment:

AMENDMENT

Section 509 of Title V of the Housing Act of 1949 is amended by changing subsection (d) to (e) and adding a new subsection (d) as follows:

> "(d) the Secretary shall, in the event of default involving a security interest in tribal allotted or trust land, only pursue liquidation after offering to transfer the

> account to an eligible tribal member, the tribe, or an Indian housing authority. Should the Secretary subsequently proceed to liquidate the account he/she shall not sell, transfer or otherwise dispose or alienate the property except to the aforementioned entities."

This amendment would encourage more Indian people to participate in the FmHA programs and provides a valuable, almost untapped, resource. For example, over the past five years, less than one-half of one percent of FmHA's 502 and 504 loans went to Indians.

An additional method of assisting tribes would be to create a **revolving loan fund** where Indian housing authorities would construct units and recycle collected payments for additional housing projects. The establishment of such a fund would have to be Congressionally mandated and funded, however, over time, the fund could become self-sustaining.

I would also like the Committee to consider some additional changes to the HUD Indian housing programs.

1. Relief for Old Mutual Help Program Participants

The Old Mutual Help Program was designed for very poor Indian families. In today's economic climate, financial circumstances often prevent these families from making homeowner payments. This is contrary to the intent of providing housing for low-income families. It is recommended that HUD allow the IHA to convert such a unit to rental so that families can continue to live in the home without threat of eviction. Further, once these units are paid off by the IHA, the family becomes the owner of that unit. NAIHC requests the Committee's assistance in urging HUD to publish a process for unit conversion, allowing the unit to ultimately be owned by the resident family when the unit is paid off.

2. Parity in Allowable Expense Level (AEL), and PFS modeled for Indian housing authorities

HUD's Performance Funding System (PFS) was designed for urban public housing authorities without adequate consideration of the unique administrative problems IHAs face. The PFS Allowable Expense Level has created inequities in the subsidy levels between IHAs. Current levels vary at least from $67 to $144 per unit per-month. It is requested that the committee help us in requesting HUD to undertake a review of the IHA allowable expense level under PFS for the purpose of redesigning the PFS to meet the needs of IHAs and create parity between the AEL's of Indian housing authorities, including a minimum funding level regardless of size.

3. Change the Deductions Allowed for Family Members and Elderly and Roll Back Rent from 30% to 20%

Indian families have almost no opportunities for decent housing except for HUD-financed units. In determining the family's eligibility for occupancy and continued occupancy, the individual deduction allowable to determine the adjusted gross income are inadequate to serve the lowest income participants. NAIHC recommends that the individual deductions from income be increased from $480. per each dependent household member to $1,000 for each family member residing in the household regardless of status, and that the elderly deduction be increased from $400 per elderly family to $2,000 per elderly family. In addition, NAIHC recommends that the Committee roll back the percentage amount that families must pay from 30% to 20%.

4. Revise the Definition of Elderly for Program Qualification to 55 years of age for American Indians and Alaska Natives

HUD's definition of elderly is currently 62 years of age or older. Recognizing that the life expectancy of American Indians is less than that of the overall population, the Bureau of Indian Affairs has set the age for elderly at age 55 for their housing program. It is recommended that the Committee also recognize the shorter life span and change the HUD elderly definition for Indians served to 55 years of age or over.

5. Child Support Payments to be Reported as Income by the Recipient Only and Not Also by the Payer

In most Indian communities, the majority of the population lives in HUD low-rent or mutual help units. In cases where child support is paid by a person not residing in the child's unit, the payer most often also lives in a HUD unit. This causes the child support payment to be reported as income by both the payer and the recipient. NAIHC recommends that the payer of child support payments who lives in a HUD unit be exempt from including that amount as income in the certification/recertification process, if the recipient also lives in a low-rent or mutual help unit.

6. Provisions for Special Deductions from Income

In some Indian housing authorities special circumstances exist which cause unintentional and unfair hardship on program participants. For example: 1) housing authorities that are close to the Canadian border have enrolled members who may work in Canada, live on the reservation or native village in the United States, and thus pay income taxes in both countries. This individual's rent or homebuyer payment is based on his/her gross income. Since income tax is paid twice, that person's actual income is less than reflected by his/her U. S. W-2 form. A special deduction for the extra tax would be very helpful as an adjustment to income for rental or homebuyer payments; 2) an individual lives on the reservation but works in the city some distance from home. In order to support the family, this person must maintain both a home on the reservation and a room in the city where expenses are far higher than on the reservation. Again, the rent or homebuyer payment is determined by his/her gross income but a substantial portion of that income is being used up for residences in two locations. A special deduction is requested for these types of circumstances.

7. Add Indian Turnkey III Homes to the Indian Housing Act (P. L. 100-358)

Although there were only 2,370 IHA homes constructed under the Turnkey III Program, and though no new homes are being constructed under this Program and some IHAs are converting some units to rental, the IHAs still managing this program need clear regulations to go by. Many families who originally participated in the Turnkey III Program have not changed their desire to become homeowners and have no interest in becoming renters after years of paying on their homes. Turnkey III is a homebuyer program like Mutual Help, not a rental program. Unlike Mutual Help, Turnkey III is not mentioned in P. L. 100-358 and HUD often ignores it when regulatory changes are made for Low Rent or Mutual Help. For example, unless a housing authority has specified differently in its Turnkey III contract, the homebuyers must pay 30% of their adjusted income plus maintenance and utilities on the unit. These are low income persons who cannot afford the rising costs; under Mutual Help the IHA determines the amount to be paid between 15 and 30 percent of adjusted income. The same rules should apply to Turnkey III. NAIHC requests the Committee to add language to the Indian Housing Act which includes Turnkey III and to make regulations consistent with the Mutual Help Program.

8. Technical Assistance to Indian Housing Authorities

HUD has currently identified fourteen housing authorities in need of technical assistance on the basis of their Administrative Capability Assessment (ACA). A minimal amount of funding (only $150,000 this year) has been available from HUD for on-site technical assistance to these troubled Indian housing authorities, however, I understand that HUD has turned back funding for technical assistance. NAIHC estimates that the current amount of funding will assist from three to four IHAs in need. Funding should be increased for technical assistance to at least $300,000 per year for three years, and HUD should allow IHAs to request the funding for technical assistance in their operating budgets.

9. Include Indian Tribes for Homeless Assistance

Under Title III of the Stewart B. McKinney Act, a National Board administers funds to provide food and shelter to the homeless.

The Board is comprised of organizations that ordinarily do not have a network operating on Indian reservations. According to staff at the Federal Emergency Management Administration, tribal governments are not considered recipients for assistance under this Title. Eligible recipients are the local chapters of nonprofit organizations and local governments. Although Indians on reservations and other Indian areas are counted in the labor statistic reports that determine the distribution of funds, they are not served.

The National American Indian Housing Council recommends that a representative of Indian tribal governments be appointed to the National Board of the Emergency Food and Shelter Program, and that Indian tribes be made eligible along with "States" under Title III and Title IV.

10. Funds to Fight Substance Abuse

Last year, a program to provide assistance to public and Indian housing authorities to fight substance abuse problems was authorized but not appropriated any funding. NAIHC requests that if additional authorizations or appropriations of funds become available that IHAs be eligible for this type of funding.

11. Make Indian Tribes Eligible for All Programs

This Bill has several new initiatives for Americans to realize affordable housing opportunities, including assistance to first time homebuyers and the establishment of a Government National HOME Corporation. Indian tribal governments need to be made eligible for these new programs along with State and local governments. Due to the nature of the federal trust responsibility, states or local governments often do not serve or share resources with Indian tribes. I recommend that Indian tribes be included in the definitions sections throughout the Bill, particularly under Title I, Sec. 104 either as a "unit of general local government" or "State."

Senator Cranston, and members of the Housing and Urban Affairs Subcommittee, I appreciate the opportunity to testify on these issues and I hope you will give them your consideration. I want to thank you, again, for your support of housing assistance to American Indians and Alaska Natives, and this opportunity to testify on the National Affordable Housing Act.

Senator **Cranston**. I want to begin by going over your assessment of the Indian Housing Act of 1988 which established distinct legislative authority for the Mutual Help Home Ownership Opportunity Program. That was intended to avoid needless difficulties that resulted when public housing provisions designed for dense urban areas were applied to geographically remote Indian areas with distinctive cultural, religious and political traditions.

BENEFITS OF THE INDIAN HOUSING ACT OF 1988

So what I would like to ask you is what have been the benefits of the Indian Housing Act of 1988 based on your experiences, and what are your views on the need to continue this special legislative attention to housing for Native Americans by including the Low-Income Public Housing Rental Program and turnkey III under this separate title?

Mr. **Key**. I'll start. First of all, the Housing Act of 1988, the final regulations are not available, and so they haven't really been implemented completely. So it's really difficult to address what advantages we have had by that law.

However, I can address the second part of your question about whether or not we need special legislation for the low rent program. At my housing authority I have 3,000 units that I am executive director over. Included in those 3,000 units, 800 are what is normally referred to as public housing low-rent apartments, and I have a 9-story apartment complex in a city of about 200,000 people. My service area is 13 counties. The whole south central portion of the State of Oklahoma is my area.

In all of those low-rent units we are not allowed to practice Indian preference. In the mutual help program you are. And because of that situation and because I know that the money to build those units was appropriated by Congress for Indian housing problems, I feel that by separating the low-rent program into separate legislation we could address that issue, that those units were built for Indian problems, Indian housing problems, and therefore we could practice Indian preference in those low-rent 800 apartments that I have. At this point we provide low-rent apartments for any race and anyone that is low income.

So in my region anyway I know that we would appreciate that very much.

Senator **Cranston**. Any differing views?

[No response.]

If not, let me go on to another matter. The housing problem in Indian country is not so much lack of affordable housing, but rather lack of any housing at all. Much of this is due to the difficulties of building in remote rural areas, the high costs and severe lack of necessary infrastructure like water and sewer treatment.

Given these problems, how could Federal Indian housing programs do more to encourage the development and use of innovative building methods designed to produce more houses at less cost more quickly?

Some have suggested that greater use of manufactured housing would reduce the cost of Indian housing programs. Others have called for greater use of architecture that reflects the cultural history of Native Americans.

Do you have any thoughts on those points?

Ms. Spencer.

Ms. Spencer. Well, on how could Federal Indian housing programs do more to encourage innovative building methods and so forth, I would do a couple of things, and I would encourage, especially under the Indian Housing Act and the new mutual help activities, that self-help housing be a recommended building method. That's something that Indian Tribes are not familiar with, and possibly encouraging a demonstration of some self-help projects on Indian reservations either through the HUD Mutual Help Program or also under the Farmers Home program, I think would be a good idea.

I also think that HUD needs to provide more information on different innovative methods to the Housing Authorities before development starts to encourage solar methods and different kinds of things. I don't think the Housing Authorities have enough information on what is available out there for new designs.

In terms of manufactured housing versus cultural housing, I think the choice is going to vary a lot from tribe to tribe, and I think what's important is that quality housing at an affordable cost be made available. HUD actually allows either manufactured housing or cultural housing, and it has been up to the tribe to decide what kind they want. I think our big problem is give us any kind you want, but just give us the money to build them with.

Senator Cranston. Any other comments on that point?

Mr. Key. Yes. First of all, your question about building more homes for less cost more quickly, one thing that would help in that area is if you directed HUD to allocate the funds directly to the Housing Authorities not tied to a number of units, which sounds a little unusual. But what usually happens if we advertise or bid these projects to developers, and they submit their bids based on say 30 homes.

Well, because it is competitive, many times the price is so low, in our area anyway, that we are able to have money left over from that money that was allocated for that project of 30 homes. Well, if we were allowed to build more homes with the money that is available, just whatever is proposed by the developers to that many dollars, I think that we could build more units with the amount of money that is provided.

Now as far as any additional, any kinds of other manufactured housing or whatever, I had a demonstration project in my area about 3 years that was panelized homes, not mobile homes and not manufactured homes, but panelized. It came out .in panels on trucks. We put them together on the foundations in a mixed environment where we had all kinds of subsidized and nonsubsidized housing units, and they fit right in. You couldn't tell the difference and the people are just as happy with them as anything else, but they cost less.

So if we look into other alternative construction methods, then I would suggest looking at the panelized construction. They are acceptable to the people.

And the last point that you brought up had to do with other architectural influences in the design of the homes. The only concern I would have there is as long as the home remains safe and sanitary, then why should we be even concerned about what the house looks like. Let the tribe decide that, yes, definitely, just as long as it meets certain standards.

Senator CRANSTON. We have been joined by Senator John McCain, who is a member of the Select Committee on Indian Affairs. I am delighted you came over, and if you have a few remarks you would like to make, they would be most welcome.

OPENING STATEMENT OF SENATOR McCAIN

Senator McCAIN. I appreciate your indulgence, Mr. Chairman, and I also want to thank you for inviting me and other members of the select committee. As you know, I am the Vice Chairman, and Senator Inouye is the Chairman, and he has an incredible commitment on these issues, and I know that I speak for him when I make these remarks.

I am grateful for you inviting me, and I would like to make just a couple of remarks. I know that the time of the committee is limited.

Mr. Chairman, I have traveled all over Indian County both in my State and around the country. People are living in holes in the ground, people are living in tents, abandoned cars, and sometimes two or three families are crowded in a bedroom, house or trailer, and in short the conditions are deplorable.

In 1970 the Bureau of Indian Affairs Annual Housing Inventory reported that 63,000 Indian families were in need of new or substantially rehabilitated home. In 1987 that figure stood at 92,000, and that figure has increased to 98,000 Indian families that are living without or in substandard housing.

Mr. Chairman, I have a lot of things to say, but they are first citizens, and they are obviously in this program, as many other Federal programs, coming in last.

The National Housing Task Force issued a report last year, and there was one column—one column on the last page of the report that talks about Indian housing. Well, you know, that's not the kind of attention that this issue deserves.

I think, frankly, Mr. Chairman, that we need to authorize at least 3,000 units authorized for the Indian Housing Program. Both S. 565 and S. 566 as introduced would authorize approximately 1,250.

Mr. Chairman, I would like to submit my complete statement for the record. I do appreciate your interest and concern on this issue. I'm grateful for your attention to it, and I look forward to working with you as we try to address the housing needs of Native Americans. And I'm deeply appreciative of your commitment on this issue.

[The prepared statement of Senator McCain follows:]

Prepared Statement of Senator John McCain

Mr. Chairman, I want to thank you for inviting the members of the Select Committee on Indian Affairs to join the Housing Subcommittee today for this hearing on the National Affordable Housing Act, and in particuar to receive the testimony concerning Indian housing programs.

As you pointed out in your letter to the Indian Affairs Committee, Mr. Chairman, the Committees on Banking, Housing, and Urban Affairs and Indian Affairs have agreed to work together on matters affecting Indian housing programs. We look forward to reviewing S. 565 and S. 566 and suggesting amendments so that existing a new programs can be tailored to the needs of Native Americans.

Mr. Chairman, the lack of safe, decent, and sanitary housing on Indian reservations can be described as nothing short of a national tragedy. As Chairman Inouye and I have traveled throughout Indian country, housing problems are always among the major concerns expressed by tribal leaders. On one particular trip, I will never forget the scene of a Navajo family literally living inside a hole in the ground covered only by the loose boards they were able to scrape together. On other reservations, Indian families are sleeping in abandoned cars, tents, and sometimes two or three families are crowded in a one bedroom house of trailer.

In 1970, the Bureau of Indian Affairs' annual housing inventory reported that 63,000 Indian families were in need of new or substantially rehabilitated homes. In 1987, that figure stood at 92,000. Today that figure has increased to 98,000 Indian families.

From a historical perspective, it is important to note that Indian tribes were not eligible to participate in HUD programs until 1961. The first office devoted exclusively to Indian housing was not established until the mid 1970's. And, up until the enactment of the Indian Housing Act, of 1988, the Indian housing program used the same rules and regulations that had been developed for the more urban-oriented public housing program.

With respect to the National Affordable Housing Act, the primary concern of Indian tribes remains the number of new housing units that will be authorized. New construction units have been—and will continue to be in the foreseeable future—the primary way of addressing the Indian housing crisis. Unfortunately, other HUD programs have not been as effective in meeting the housing needs of low-income families as they are for families receiving public housing assistance. For example, under the rental voucher program, many Indian families are unable to take advantage of the program because of the scarcity of rental housing stock. In my view, a minimum of 3,000 units needs to be authorized for the Indian housing program. S. 565 and S. 566 as introduced would authorize approximately 1,250 units.

At the same time, we must also commit ourselves to the important and challenging task of finding alternative delivery methods for providing houses for low-income Indian families. In this regard, I recently proposed to the members of the National American Indian Housing Council the establishment of a 1 year National Commission on Indian and Alaskan Native Housing. The Commission would be charged with the task of reviewing and recommending alternative delivery methods and how other HUD programs could be coordinated in a better maner to provide the important community development along with housing development. The parameters of the commission: size, funding, staffing, etc, are still in the planning stages, but I can assure you they will be developed within the timeframe our committees have set for consideration of S. 565 and S. 566.

I think it long past time for Indian housing problems to be brought out for national exposure. With all due respect to the National Housing Task Force, one column on the last page their report does not do justice to the real housing problems that Indians and Alaskan Natives face. We can and must do more.

Mr. Chairman, I want to thank you again for inviting us to be a part of these important proceedings. I also want to thank your committee staff for the courtesies they have extended to the staff of the Indian Affairs Committee.

Senator CRANSTON. Thank you very, very much.

I assure you that we will do all we can to push Indian housing. I'm deeply committed to it, as you are, and I appreciate your support and I'll count on it on this and other aspects of the bill.

Senator McCAIN. Thank you, Mr. Chairman.

Senator CRANSTON. The Commission to Explore Alternative Funding For Housing For Native Americans and Alaskan Natives is a proposal by Senator McCain, which you mention, Ms. Spencer, in your testimony.

Could each of you briefly comment on the proposal for that Commission and what alternative sources of funding would be the most promising to explore in your opinion?

Ms. SPENCER. Mr. Chairman and Senator McCain, I stated earlier that the National American Indian Housing Council endorsed this proposal. There are some areas that I think deserve some attention. There is at least one model state program that provides financing for housing that maybe other States would be interested in.

I think the Indian Financing Act has some possibilities of maybe amending it to provide bond financing for housing construction.

I would like to get some folks to take a look with us on the low-income tax credit program, which is up for a reauthorization, and we endorse that reauthorization, but I think that has some possibilities on Indian land.

This is not an alternative source of funding in a sense, but I think it's probably good to look what barriers are existing in the Federal programs and maybe even at the State level that hinders housing development in Indian Country.

I would urge a Commission to technically help us with some of those issues, and probably there is a lot more.

Senator CRANSTON. Any other comments on that?

Mr. JONES. I would just like to restate that amendment that I spoke about in my testimony about the FmHA. The people back home are really reluctant about their land and signing mortgages in that area. So if we could open that up a little, it would help.

Senator CRANSTON. Good. Thank you.

The HOP program is intended to provide States with the flexibility to address their diverse housing needs, and I would expect that States would design programs to meet the special housing needs of Indian reservations.

What do you see as special benefits of the HOP program as far as your interests are concerned, and do you believe that your State and other States that you're familiar with have the capacity to design and implement housing programs for Indian reservations?

Mr. KEY. Well, no, I don't think that the State has the capacity to do so. Now perhaps they do and I'm not just aware of it, but there is another problem there, and that is that most Indian tribes view themselves as sovereign nations which are subservient only to the U.S. Government, and it puts them in a peculiar situation then. It implies the paternal authority of the state over an Indian tribe, and I don't think that that kind of relationship would work.

Senator CRANSTON. That's an important point.

Mr. KEY. Yes. So because of that, no, I don't think that it would work.

Senator CRANSTON. Any other comments on that?

Ms. SPENCER. Yes. We have requested that Indian tribes be made eligible for all the programs that are included here, and obviously some might be better suited for Indians than others, but I think under the Housing Opportunity Partnership Program, it would probably be hard for most tribes to match funds, but I think there might be a handful out there who would be able to do that and would be willing to do that. So I think Indian tribes need to be included.

I like the revolving housing trust fund. I think revolving funds are very effective in housing. But generally, no, I don't think States have the capacity or even want to design and implement housing programs for Indian reservations, and we need some ways to do that, and making Indian tribes eligible as a State or a local government under the definitions would give us a chance to do that.

Senator CRANSTON. Now each of you suggested a number of important revisions to the existing Indian housing programs. Would you like to expand on any points that you raised in your opening statement or do you have any disagreement with anything expressed during this phase of our hearing or is there anything you would like to place greater emphasis upon?

That's a broad general invitation.

[No response.]

If not, I thank you very much for your appearance.

Senator MCCAIN. Mr. Chairman.

Senator CRANSTON. John.

Senator MCCAIN. First of all, I would like to thank your staff, Senator, for all the cooperation they have given us on this issue, and I think they have done a very fine job and I appreciate all their cooperation.

I would just ask one additional question to the witness, and that is concerning the viability of the HIP program, the Housing Improvement Program which, although is certainly not a panacea, has been of some assistance to Native Americans, if that would be agreeable to you, Mr. Chairman, if we could have their comments.

Senator CRANSTON. Sure.

Senator MCCAIN. Ms. Spencer, are you familiar with that program?

Ms. SPENCER. Yes, I am, and it's a good program and we just need more funding for it. I would like to maintain the ability of tribes to opt for new construction as well as rehab under that program, and I know from time to time it has been proposed that HIP funds not be used for new construction. But every once in a while we need to have that flexibility, and I think the HIP program is a very good one and it needs to be maintained and funded.

Senator MCCAIN. Mr. Key.

HIP PROGRAM GROSSLY UNDERFUNDED

Mr. **Key**. Yes, I feel the same way. Really the biggest problem with the HIP program is that it is grossly underfunded, and therefore it is not really a viable program where I come from.

The reason that the money is not used for new construction is in order for the money to go as far as possible by rehabing the units that people live in now.

I think that we could go further by encouraging the tribes and the BIA to allow existing Indian Housing Authorities to run that program and in that way save money in administrative costs because we already have Indian Housing Authorities and some do administer the HIP programs, but very few Housing Authorities do. So perhaps encouraging Housing Authorities to run those programs also as well.

Senator **McCain**. Mr. Jones.

Mr. **Jones**. The HIP program at the Sisseton-Wahpeton Tribe does help take care of the units that were built way back in the early 1960's by the BIA. Most of their funds that they get year to year, they usually try to maintain and keep those early houses going and it has a very positive effect on the reservation.

Senator **McCain**. We just need more money.

Mr. **Jones**. Oh, yes.

[Laughter.]

Senator **McCain**. Thank you very much, Mr. Chairman.

Senator **Cranston**. Thank you, John. We appreciate your involvement very, very much.

We thank all of you, the three who are now at the table with us, and all of you for your interest and attention.

This hearing stands adjourned.

[Whereupon, at 12:05 p.m., the subcommittee adjourned, subject to the call of the Chair.]

[Additional material supplied for the record follows:]

HOPI TRIBAL HOUSING AUTHORITY

June 19, 1989

Senator Alan Cranston
Committee on Banking, Housing and Urban Affairs

Honorable Senator Cranston:

I am in receipt of your letter dated June 08, 1989, inviting me to appear before and provide testimony to the Senate Subcommittee on Housing and Urban Affairs on Wednesday, June 21, 1989.

Believe me, Senator and Members of the Subcommittee on Housing and Urban Affairs, that it is an honor to receive this invitation to appear before you and given this very unique and prestigeous opportunity to relay to you, the housing situation, housing conditions, need for adequate housing in Indian Country, but most unfortunately, I have conflicting schedules and for what significance it might have, I will be involved in one of my tribal ceremonies during this week, and therefore cannot take advantage of this opportunity. Aside from personal emergency situations and my tribal ceremonies, there is nothing that can keep me from providing information necessary to improve the housing conditions in Indian Country.

The Hearing in particular is on the "National Affordable Housing Act," S-566. The housing concerns, the social needs in the Indian country seem to have last priority in the minds of the Congress when it comes to adequate appropriations. Indian needs or situations are first in Congress' minds when budget cuts are discussed.

We cannot emphasize enough the responsibilities of this great nation of ours, its responsibility for its first inhabitants, the American Indian and Alaskan Natives.

Today, we have a documented need for 90,000 new housing units for the American Indian nation wide. This does not project for the population growth in the next five to ten years. In order for us to take a very serious effort toward eliminating dire housing conditions, overcrowdedness, insanitary conditions, homelessness, funding appropriations adequate for at least 10,000 units annually might be reasonable, if we are to control the housing situation within ten years. Up until the federal fiscal year, 1980, Indian Housing had been appropriated 6,000 units each year. Last year, 1,243 units were appropriated, and this is not even a drop in the bucket, to seriously work on eliminating the Indian Housing plight. This year, under the new "Indian Housng Act of 1988," funding for 2,000 units is under consideration, but more funds are drastically needed.

The "National Affordable Housing Act," is another, commendable approach to addressing the housing need of the low income American people. Section 101 of this National Affordable Housing Act states, "The Congress affirms the national goal that every American family be able to afford a decent home in a suitable environment." Senator Cranston, with all due respect, we sincerely apreciate this commendable goal but would appreciate it very much if the American Indian and the Alaskan Natives be included, named in this goal statement. We very much want to participate, benefit from this "National Affordable Housing Act," but this is required. We have our experience from the "National Housing Act of 1937" to justify this special requirement.

The uniqueness of the Indian Country, federal trust land status requires certain considerations that would not alienate the land base, to better afford Indian families opportunities to participate in these projects.

Another concern, due to limited economic development on most Indian areas, more reasonable approaches need to be made as to payments. The payback requirements should be based on at least 20% of the family's adjusted income, deduction for family dependents, more consistent with the Internal Revenue Service be implemented.

Major factor, to enable the Indian local governments to be designated as specified under section 104.

Again, Senator Cranston and Members of the Subcommittee on Housing and Urban Affairs, I appreciate this opportunity to present our concern, need for adequate funding for housing, especially Indian Housing and if provisions made in this Senate Bill S-566 "National Affordable Housing Act" for the Indian families to participate, this would provide added opportunities for the dire housing situation to be addressed.

Respectfully submitted,

Joseph Laban kk

Joseph Laban
Executive Director

JL:kk

MISSISSIPPI BAND OF CHOCTAW INDIANS

ROUTE 7, BOX 21
PHILADELPHIA, MISSISSIPPI 39350
TELEPHONE (601) 656-5251

June 18, 1989

Honorable Alan Cranston, Chairman
Subcommittee on Housing and Urban Affairs
Committee on Banking, Housing, and Urban Affairs
Room SD-535 Dirksen Senate Office Building
Washington DC 20510

Dear Senator Cranston:

I regret very much that schedule conflicts will prevent me from accepting your invitation to testify before the Subcommittee on S. 566, the proposed National Affordable Housing Act; but I would like to make some remarks on the legislation in this letter that will make my views known to you, the other members, and the Subcommittee staff.

After nearly a decade of neglecting to replenish the housing supply in this country, there is now a dire housing crisis of major proportions, which S. 566 is intended in part to address. But while the national housing crisis has been slow to emerge, there has been, for most of this century, an ongoing housing crisis on this country's Indian reservations. I do not have all of the statistics on this, but I do know one: that by the end of this year there will be a need in excess of 100,000 new housing units. Thus, of the approximately 450,000 reservation residents, a full one-quarter have no, or no decent, housing.

Although incomes on reservations remain much lower than national averages, the homeownership and HOME corporation provisions of S. 566 would be of essential help. The Mortgage Insurance provisions of FHA section 248, recently enacted, will assist greatly as well, though it is only now in the beginning stages of implementation. The reason these provisions will and would help, is that they allow higher income persons to construct their own housing on reservation, freeing up HUD units for those persons on the long waiting lists.

The proposed Project Independence would also be of great benefit to Indian tenants. Tribes have several programs authorized by other legislation, including the new JOBS program, adult education programs from the BIA and Department of Education, and JTPA programs, that could be used to develop a comprehensive services system for Indian housing residents.

But in order to make these programs available to Indians, the Subcommittee would have to add language, either to the individual titles in the bill, or in section 104, the definitions, to include Indian tribes as a "participating jurisdiction." I would urge also that tribes be included in the HOP proposal by exempting them specifically from the $1,500,00 allocation for participation. Finally, I would also urge that wording be included in proposed Title VII on FmHA assistance, that would specify identification of

"CHOCTAW SELF-DETERMINATION"

reservations as underserved areas.

Thank you for the opportunity to comment on this proposed legislation, which has the potential for solving a great number of critical housing problems, hopefully in Indian Country, as well as the rest of the country.

Sincerely,

Phillip Martin

Phillip Martin
Chief

PM:ab

cc: Mississippi Delegation
Virginia Spencer

STATEMENT

REGARDING S.566

Submitted to the

UNITED STATES SENATE

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

Gideon Anders
NATIONAL HOUSING LAW PROJECT
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June 21, 1989

Thank you, Senator Cranston, for inviting the National Housing Law Project (the Project) to testify about S.566, the National Affordable Housing Act, and other rural housing issues. We regret that we were not able to attend the June 21, 1989, hearing in person, but hope that you will review this testimony and include it in the hearing record.

Since 1968, the Project has been a resource center on housing matters for attorneys and others who represent poor people in all parts of the country. The Project's staff has extensive knowledge regarding the housing needs of poor people and the operation of the federal housing programs, including those of the Farmers Home Administration (FmHA). We are pleased, therefore, to have this opportunity to submit this testimony on S.566 and related rural housing issues.

I. THE NATIONAL AFFORDABLE HOUSING ACT

The Project has previously submitted extensive comments to the Committee's staff with respect to the major provisions of S.566. We will, therefore, not repeat our views here except to applaud the Committee's commitment to continue the programs of the FmHA and the Chairman's commitment to increase funding for these programs to the levels set by the Budget Committee.

We also wish to point out that the Housing Opportunity Partnership (HOP) provisions of S.566 are not drafted in a manner that will ensure rural areas their fair share of funding. The legislation proposes that 40 percent of the HOP funds be distributed to states to meet statewide housing needs. It does not, however, require that the states use any of these funds in non-metropolitan areas. We urge the Committee to establish a non-metro set-aside, similar to that used in the Small Cities Community Development Block Grant Program, which will ensure that at least 25 percent of the HOP funds are used in non-metro areas.

II. RETAINING THE LOW-INCOME RENTAL HOUSING STOCK

A. Extending Use Restrictions on FmHA Rental Housing to 50 Years

The Project strongly urges the Committee to adopt legislation, identical to that proposed in H.R.1180, that would require all future rental housing financed by FmHA to be maintained as housing for very low-, low- and moderate-income persons for the term of the FmHA loan. To continue to allow owners to prepay their loans after 20 years, or even to allow them to obtain equity loans at 20-year intervals, is fiscally imprudent and unnecessary to the development of rental housing by private for-profit developers and managers.

As a recent study by the Low Income Housing Coalition has shown, the need for decent and affordable housing in this country is growing dramatically. To the extent that the federal government plans to address that need through the construction of new rental housing, especially at this time of severe budgetary constraints, it must do so in a fiscally prudent manner. This means that the federal government cannot afford to replace housing that it has almost entirely financed and entirely subsidized before the useful life of that housing has expired. In other words, the federal government cannot go on replacing federally financed projects every 20 years. As this Committee knows all too well, refinancing of existing subsidized housing in order to maintain its low- and moderate-income status threatens to undermine this nation's ability to meet the growing need for decent and affordable housing. It is simply too expensive to proceed on the course followed by the federal government for the past 20 years.

Nor can the federal government afford to make or guarantee equity loans to owners of FmHA rental housing at 15- or 20-year intervals. As long as appropriations for housing are limited and loan guarantees are "on budget," guaranteed equity loans will reduce the level of appropriations for newly constructed Section 515 and Section 514/516 housing. At a time when the need for affordable housing is increasing, we cannot afford to mortgage our future ability to finance housing merely to provide owners with greater returns on investment. More importantly, equity loans, even if guaranteed and "off budget," will require substantial new subsidies to maintain the project rents at levels affordable by low- and very low-income families.

The dire fiscal consequences of an equity loan program can best be illustrated by looking at two California projects financed by FmHA and constructed by a private developer in 1976 and which are about to be sold to a nonprofit corporation.

These two projects contain a total of 26 units. They were financed with two FmHA loans totaling $541,800. Assuming, conservatively, that these loans represented 93 percent of the cost of developing these projects, the owner's investment in the projects in 1976 totaled $40,800. In 1987, the owner agreed to sell these projects at their then estimated fair market value of $1,326,000. If, as it now appears likely, these projects are sold in 1989 at that price, the owner will have realized a net profit of $743,400 on his original investment, based solely on the appreciated value of the project. This is a return of 1,822 percent over a 12-year period.

In fact, because the owner of these projects has made monthly loan payments for the past 12 years, all of which came from the project's rents, the principal amount of the FmHA loans has been reduced and the owner's profit from the sale will actually exceed $750,000. Moreover, because the owner probably depreciated these projects on an accelerated basis, regularly withdrew the allowed return on investment, and derived fees and profits for managing the projects, it is very likely that the owner's total return on his original investment in these projects will be well in excess of 3,000 percent!

Assuming that an equity loan program were in place, the owner of these projects would automatically qualify for a $650,000 equity loan free of any immediate tax consequences. In other words, FmHA would lose the ability to finance, at today's costs, between 8 and 15 new units of housing in order to induce this owner to maintain 26 units, which were nearly fully financed and fully subsidized by FmHA, as housing for low- and very low-income families for an additional 15 years. Moreover, FmHA would be required to make new Rental Assistance subsidies available to this owner to enable him to amortize this equity loan without increasing the tenants' rents. It is our estimate that the cost of this increased subsidy would be in excess of $3,000 per unit per year or in excess of $78,000 per year for these 26 units.

Presently at least, when these two projects are sold, they are likely to remain in the FmHA program for the next 50 years and no additional loans will have to be made by the FmHA to preserve them as housing for low- and moderate-income families.

While it is true that not every FmHA project will appreciate in value to the extent that these projects have, we can be sure that rising property values will substantially increase owners' equity in FmHA projects and will require the federal government to expend substantial sums to retain the FmHA housing stock as housing for low-income persons.

Moreover, the very fact that not all projects will appreciate in value as these projects have suggests that it would be inequitable to fashion a long-term incentive program that is predicated on speculative factors such as increased property values. If, as several witnesses at this hearing have maintained, it is necessary to increase owners' return on investment in order to encourage their participation in the rental housing program, all owners should be able to obtain the same or a comparable rate of return on their investment. Their rate of return should not be dependant on the vicissitudes of escalating or declining property values. There simply is no justification for allowing a California owner to have a 3,000-percent return on investment because property values happen to be skyrocketing in that state, while a Nebraska owner obtains a 150-percent return because property values in that state have generally been depressed.

Importantly, we believe that the FmHA rental housing program will continue to thrive with a 50-year use restriction and that it is unnecessary for Congress to fashion various incentives, such as equity loans, to induce participation in the program. We believe, and our belief is supported by the experiences of several states, that the FmHA rental programs, particularly when combined with tax credits, contain sufficient profit incentives for private developers to maintain a high level of interest in participation.

In contrast to any other lending program, FmHA, as a result of recent legislation, is now authorized to make loans for 97 percent of the cost of constructing a rental project. Indeed, investors need not even raise the remaining 3 percent in cash if they can obtain a letter of credit for that amount. Moreover, this 3-percent contribution may also be in the form of land, often purchased by the owner at a price substantially below the fair market value at the time the FmHA loan is made.

Private owners of FmHA housing usually make additional substantial profits in the development and construction of the housing through their participation as architects, engineers, consultants, realtors, lawyers, syndicators or contractors.

Once the project is constructed, owners have few, if any, risks. Rents are subsidized by FmHA through interest credit or rental assistance, and those subsidies have historically been available, either by contract or by periodic renewals, for the term of the loan. Private owners of FmHA housing are allowed an 8-percent return on their original investment, in addition to any profits they may derive from managing the projects and from selling, often through identity of interest entities, various products and services needed by the project.

If that were not enough, private investors have been able to take advantage of lucrative tax shelters which have historically enabled these owners to recoup their entire investment in the project in fewer than five years. The low-income tax credits authorized by the Tax Reform Act of 1986 may have reduced those returns somewhat and extended the period over which they may be realized, but there is no denying that investment in subsidized housing provides a relatively high yield at a very low level of risk. The fact that FmHA projects used a substantial percentage of tax credit allocations in the past year is ample testimony to the attractiveness of coupling FmHA financing and subsidies with tax credits.

It is indeed curious that FmHA, with its liberal lending rules, only requires owners to maintain their housing as low- and moderate-income for a term of 20 years. The California Housing Finance Agency (CHFA) has required its borrowers to make CHFA-financed housing available for low- and moderate-income persons for the term of its loans, usually 30 years and, on occasion, 40 years. The New Jersey Housing Finance Agency recently adopted regulations that would require owners of its projects to obtain the agency's permission to prepay their loans, and thus avoid the agency's use restrictions, before the expiration of 50 years.

Clearly these state agencies do not believe that requiring owners to maintain projects as housing for low- and moderate-income tenants will lessen the production of subsidized housing in their states. Likewise, Congress should not fear that extending the use restrictions on FmHA loans to coincide with the loan term will decrease the demand for or the production of FmHA rental housing.

B. Extending Use Restrictions on Existing Rental Housing Loans

Should the Committee adopt the life-of-loan use restrictions on all new FmHA projects, we urge that it extend the same use restrictions to all projects financed after December 21, 1979, as well as to projects financed prior to that date but refinanced, by an equity loan or otherwise, since May 23, 1988. By extending these use restrictions to all existing projects, Congress would place all existing owners on an equal footing and effectively settle the prepayment issue.

C. Implementation of the 1987 Restrictions on Prepayment of Rental Housing Loans

Before leaving the prepayment issue, we also would like to point out that prepayments continue to pose a serious risk to the FmHA housing stock and that the magnitude of that risk is far greater than some witnesses would lead this Committee to believe.

Between May 23, 1988, and April 19, 1989, owners of 151 FmHA projects have filed requests to prepay their FmHA loans. These projects contain 4,733 units of housing. FmHA has so far authorized prepayment for 30 of these projects for a total of 438 units. In our opinion, several of these prepayments were made in violation of the prepayment restrictions contained in the Housing and Community Development Amendments of 1987. We will describe some of these illegal prepayments later in our testimony.

Only three of the 151 applications for prepayments have been withdrawn. Eighty units of housing are contained in these three projects. For 34 projects, representing 1,592 units, FmHA either has made or has committed to make equity loans to the owners seeking prepayment. In all but two of these cases (about which we have no further information), FmHA has either made or offered the owner 90-percent equity loans in order to induce the owner to maintain the housing in the FmHA program. FmHA has refused to grant incentives to owners in only two instances.

Importantly, and contrary to our and many others' expectations, it now appears that of these 151 applications, only the two projects described earlier in our testimony will be transferred to nonprofit or public entities. Ironically, the commitment to transfer these projects to the nonprofits predated passage of the 1987 Amendments.

While nearly half of the prepayment applications have yet to be acted upon, a clear and disturbing pattern is already emerging. Owners, with FmHA's cooperation, are using the 1987 Amendments to extract their equity from the projects by obtaining 90-percent equity loans. And while the number of tenants who are being displaced as a result is minimized, the immediate and ultimate cost to the federal government threatens to be astronomical.

The fact that the rental projects financed prior to December 21, 1979, are remaining in the hands of their original owners means that, in addition to the huge sums that FmHA is committing to these owners in the form of equity loans and subsidies to maintain the housing as low- and moderate-income, additional sums will have to be committed 20 years from now in order to once again preserve this housing for the benefit of low- and moderate-income tenants. In other words, FmHA will have to pay for these projects yet a third time.

The villain in this instance is not the 1987 Amendment restricting prepayment nor the owners of pre-1979 projects. It is FmHA. It has refused to develop a mechanism, consistent with the 1987 Amendment, to ensure that the incentives offered to owners are the least costly alternative to the government and at the same time consistent with the purpose of keeping the housing stock available to low- and moderate-income households. In other words, the FmHA National Office has failed to develop an objective uniform mechanism by which to evaluate the level of incentives it needs to offer an owner in order to induce that owner to remain in the Section 515 program. Instead, FmHA has left all decisions with respect to incentives in the hands of district and state directors who are incapable of calculating the level of incentives that should be offered. As a consequence, district and state directors are all opting for 90-percent equity loans and for increasing owners' return on investment from 8 percent to the maximum 10 percent. Not only will this cause FmHA to make substantial and largely unnecessary outlays over the next several years in the form of loans, it will also require the agency to expend large sums for subsidies over the extended terms of these new loans. In short, the cost of maintaining the pre-1979 FmHA housing stock as low- and moderate-income housing is likely to be prohibitive.

Were FmHA to properly administer the program, it would develop formulas, or even better, computer models that would enable it to determine with some accuracy the level of incentives necessary to keep the owner in the program and to compare that cost with that incurred if the project were transferred to a nonprofit or public agency. Not only would this save the federal government millions of dollars in loans and subsidies, it would probably also cause a significant number of these projects to be sold to nonprofit or public entities which would, in all likelihood, keep the units affordable in perpetuity.

FmHA's maladministration of the 1987 legislation is not restricted to its failure to adequately administer the incentive program. As noted earlier, the agency is also improperly and illegally exempting owners from prepayment restrictions and is failing to impose statutorily mandated use restrictions. Moreover, in several instances it is failing to take any action against owners who are illegally displacing tenants prior to prepayment in order to circumvent the 1987 legislation.

For example, in Tecumseh, Michigan, FmHA authorized an owner of a 24-unit project to prepay a Section 515 loan under the condition that the project be maintained as housing for low- and moderate-income tenants until 1996. Notwithstanding, immediately after the prepayment, the owner, with FmHA approval, increased the project rents in order to amortize the private unsubsidized loan that replaced the FmHA-subsidized loan, thereby threatening most of the project's tenants with displacement. Not until the owner and FmHA were threatened with litigation did the owner postpone the rent increases and seek to refinance the newly obtained private loan with another FmHA loan.

It appears that, in approving this prepayment FmHA misunderstood and misconstrued the 1987 restrictions on prepayments, believing that it could approve a prepayment and a rent increase, without considering the potential for displacement, whenever the owner merely increased the rents to amortize the private unsubsidized loan. In other words, FmHA totally misunderstood the purpose and intent of the 1987 legislation and illegally approved the prepayment of this project.

In Chisago City, Minnesota, FmHA accepted a loan prepayment from an owner of a 21-unit Section 515 project for the elderly who was receiving Section 8 subsidies without offering the owner any incentives to maintain the project in the Section 515 program, without considering whether the prepayment is likely to cause displacement of current tenants, and without placing use restrictions in the deed releasing the FmHA mortgage. While these tenants have not been displaced at this time by the prepayment because of the continuation of the Section 8 subsidy, nothing protects them from displacement as is required by the 1987 legislation. Thus, the tenants in this project are going to be displaced either in 1993, when the owner has the option of "opting out" from (i.e., terminating) the Section 8 contract, or in 1998 when the Section 8 contract expires and the owner has no mechanism for continuing to subsidize any of the current tenants that may still reside in the project.

Had FmHA offered, and the owner accepted, incentives authorized by the 1987 Act, the project would have remained in the 515 program and FmHA subsidies, such as interest credit, rental assistance or debt forgiveness, could have been made available to these tenants after the expiration of the Section 8 contract. Moreover, even if the owner did not accept the incentives, use restrictions required by the 1987 Act and FmHA regulations would have protected current tenants in perpetuity.

It is important to note that, while FmHA's failure to include use restrictions in this project's release deed may be an isolated incident, its failure to offer owners incentives and its failure to properly evaluate the potential for tenant displacement in projects subsidized by the Section 8 program are not at all uncommon. In adopting regulations implementing the 1987 legislation, FmHA ignored the Act's requirement that FmHA offer incentives to every owner seeking to prepay a Section 515 loan in order to induce that owner to maintain the project in the program for an additional 20 years. FmHA regulations thus illegally authorize the agency to accept prepayments, without making an incentive offer, whenever (1) the prepayment will not cause current tenants to be displaced, (2) the prepayment will not adversely affect minority housing opportunities, or (3) the prepayment will not adversely affect minority housing opportunities and, if displacement of current tenants is likely to occur, there is other decent safe and affordable housing in the community to which the tenants may be relocated.

With respect to Section 8 assistance, FmHA staff are accepting prepayments without making incentive offers because the regulations do not require them to make incentive offers and because the agency operates under the erroneous assumption that the existence of the Section 8 contract will prevent tenant displacement. Nothing could be further from the truth. FmHA staff is for the most part unaware that Section 8 contracts entered into prior to 1980 grant owners the right to "opt out" of the contract on each five-year anniversary of the contract. Thus, every owner of a Section 515 project subsidized with Section 8 assistance and subject to the 1987 legislation has an "opt out" option in 1992, 1993 or 1994 at the latest. Moreover, in determining whether tenants are going to be displaced as a result of the prepayment, FmHA staff are ignoring the fact that all Section 8 contracts extend only for a term of 20 years, that no contract entered into before 1979 can extend beyond 1999, and that some current tenants will indeed be displaced upon the expiration of the Section 8 contract.

It is our estimate that, in addition to the Minnesota project, FmHA has illegally approved the prepayment of at least five Section 515 projects that are receiving Section 8 assistance.

Yet another instance of FmHA's maladministration of the 1987 legislation is occurring in New Jersey. There the owner of a Section 515 project who is seeking to prepay his FmHA loan is actively relocating low-income tenants from the project and refusing to rent vacant units to eligible applicants in the hope of being able to show that the prepayment will not cause any tenant displacement. Notwithstanding the fact that FmHA is aware of the owner's actions, FmHA has not taken any steps to stop the displacement of low- and very low-income tenants from this project.

Similarly, in Cortland, Ohio, FmHA is taking a hands off attitude with respect to an owner who is advising tenants receiving Rental Assistance subsidies to relocate to other housing because he is not intending to renew the Rental Assistance contract when it expires in September of 1989. While it is not clear that the owner's actions are in anticipation of an offer to prepay the loan, FmHA's failure to counteract the tenant displacement that is occurring at this project will assist the owner to circumvent the 1987 legislation in the event that he does seek to prepay his loan.

The Project urges that the Committee conduct oversight hearings on FmHA's administration of the prepayment program and, if it finds our analysis to be true, that it force the agency to alter its administration of the 1987 legislation.

III. SECTION 502 DEFERRED MORTGAGE PROGRAM

The Project fully supports the adoption of a deferred mortgage program. However, we believe that such a program should be modeled on the provisions set out in H.R.1180 rather than Section 703 of S.566. Specifically, in order to target the Section 502 loan program to very low-income borrowers, FmHA should be authorized to defer up to 50 percent of the loans as opposed to the 20 percent as proposed in S.566.

A deferred mortgage program is needed both to expand the scope of the Section 502 program and to better target it to low- and very low-income persons. Absent such a program, the opportunity for homeownership, particularly ownership of newly constructed homes, will no longer be an option for the rural poor.

Based upon the Housing Assistance Council's report, A Home of Our Own, we believe that the deferred mortgage program will be a resounding success and that it will indeed be cost effective. Contrary to other witness' testimony, we believe that providing this homeownership opportunity to very low-income rural residents will, in the long run, be less costly to the federal government than the cost of rural rental housing with its associated subsidies and revenue losses through tax shelters.

IV. LOANS TO UNDERSERVED AREAS

The Project also endorses efforts to target FmHA resources to areas previously underserved by the agency. However, we believe that Section 704 of S.566 needs to be modified in the following respects. First, the underserved area definition should include a population limitation to ensure that the funds go to very rural and remote areas which have traditionally been underserved. Thus, counties or Indian reservations with a population of 5,500 or less should, automatically, be designated as underserved areas. Second, separate authorizations and appropriations should be made available to underserved areas in order to ensure fund availability and the programs' success. Third, the project preparation advance should be eliminated and a grant program substituted instead. Absent a grant program, which separates project feasibility from the need for technical and supervisory assistance, efforts to serve remote rural areas lacking housing organizations and infrastructure will fail.

V. FmHA APPEALS PROCEDURE

A. Requiring Hearing Decisions to Be Made on the Hearing Record

The Project urges the Committee to adopt legislation requiring FmHA hearings to be decided on the record of the hearing. The requirement would further improve the FmHA appeals process, which was drastically revamped, for the better, by the Agricultural Credit Act of 1987. The fact that hearing decisions are not now required to be made on the hearing record deprives many appellants of their due process right to know of and refute evidence upon which the hearing officer relies.

For example, at a recent hearing in Georgia, the issue before the hearing officer was the Section 502 applicant's creditworthiness. The crux of the appeal hearing revolved around an interpretation of an FmHA regulation instructing agency staff, when considering an applicant's creditworthiness, to ignore judgments obtained more than three years prior to the loan application being filed with FmHA if no other incidents of bad credit appeared on the applicant's record within the last three years. The appellant-applicant argued that an unsatisfied judgment obtained against him more that three years ago should not be considered in determining his creditworthiness. The FmHA representative argued, without supporting documentation, that when a judgment obtained outside the three-year period remained unsatisfied, the three-year rule is not applicable. Unable to decide the issue on the basis of the hearing record, the hearing officer decided, after the hearing and without advising the appellant-applicant, to poll members of the FmHA National Appeals Staff on their interpretation of the regulations. Based on that information, the hearing officer, without providing the appellant-applicant an opportunity to rebut the information, decided the appeal against him.

In another Georgia hearing dealing with an applicant's creditworthiness, the hearing officer, after the hearing was concluded and without either advising the appellant or giving him an opportunity to rebut the information, called several of the applicant's creditors to ascertain their experience in dealing with him. When the information proved adverse, the hearing officer upheld the FmHA decision denying the applicant's Section 502 loan.

The practice of allowing hearing officers to go outside the hearing record, particularly without first advising an appellant, and without providing him with an opportunity to rebut the information obtained violates fundamental notions of due process and must be stopped. Consequently, we support Section 512 of H.R. 1180, which would require all FmHA hearings to be on the record.

B. All FmHA Decisions Should Be Appealable

For a variety of reasons, FmHA has always deemed certain of its decisions as "unappealable." See 7 C.F.R. § 1900.53 (1988). For the most part, FmHA has excluded from the appeals process decisions on issues specifically covered by FmHA regulations and where the underlying facts are not in dispute. Thus, for example, if persons with incomes over $10,000 are not eligible for an interest credit subsidy and a particular applicant has income in excess of $10,000, the denial of interest credit to that applicant is not appealable. Such exclusions are generally proper even though many FmHA officials make mistakes and categorize what should be appealable decisions as unappealable.

For reasons that are not clear, however, FmHA has always excluded certain decisions from the appeals process that should be appealable. For example, between 1982 and 1987, FmHA excluded from the appeals process all appraisal decisions. 7 C.F.R. § 1900.53(e) (1983). It argued that appraisal decisions are so subjective that they could not be reviewed. It would seem that the opposite rule should have applied, i.e., precisely because appraisals are so subjective they should be reviewable. More recently, FmHA, using an Administrative Notice, excluded decisions with respect to property eligibility from the appeals process. AN 1827 (1900) (November 21, 1988). In effect, it held that an applicant seeking a loan to purchase a particular house, whether new or existing, may not appeal an FmHA decision if FmHA has concluded that the house is not suitable for FmHA financing. FmHA appears to believe that the denial of financing with respect to a certain house is not a loan denial and therefore does not fall within the purview of Section 510(g).

Such exclusions, as well as others which FmHA may adopt in the future, are not consistent with the mandates of Section 510(g), and FmHA should be required to remove them. We therefore urge the Committee to require all FmHA decisions that are not based on objective published criteria to be appealable.

C. Require FmHA to Index and Make Available Appeal Decisions

The Project also urges the Committee to also include provisions requiring FmHA to collect all appeals decisions in a centralized location, to index them and to make them accessible and available to the public.

Contrary to the requirements of the Administrative Procedure Act and of due process, FmHA hearing decisions are not indexed and are not generally available to the public. As a consequence, there is no assurance of uniformity in the application of FmHA regulations, no mechanism for relying on one hearing decision for precedent in another, and no means for overseeing the fairness of the appeals process.

FmHA maintains that there is no need to maintain indexes of individual hearings and that appeals decisions do not serve as precedents because hearings relate to individual cases and are factual in nature. As a review of several appeals decisions discloses, FmHA position is not supported by the facts. For example, the hearing reviewed earlier in this testimony, where the interpretation of an FmHA regulation about past credit judgments was crucial in determining whether or not an individual was creditworthy, did not involve facts or issues relating particularly to the appellant. Instead, it dealt with the interpretation of an FmHA regulation. Such interpretations, whether favorable or unfavorable to an appellant, should be available to the general public.

Moreover, even when cases are factual, the application of FmHA regulations to a particular set of facts is itself precedential. For example, in another hearing involving creditworthiness, the hearing officer concluded that three isolated incidents of late payments did not demonstrate a poor credit history and thus was not sufficient grounds to reject a loan application. Obviously, such a decision has precedential value to other applicants with similar credit histories. It also has precedential value for future decisions on applicants' creditworthiness and can be used beneficially by FmHA in training its staff.

Notwithstanding the obvious importance and usefulness of appeal decisions, FmHA refuses to index them and make them generally accessible to the public. In response to a recent Freedom of Information request by the Project for housing appeals decisions made by the Office of the Director of National Appeals, FmHA declined to make the information available without the Project first remitting a check for $8,127 to search for and copy these decisions.

Because FmHA's position is untenable, we urge the Committee to require the agency to collect and index all appeals decisions and make them available to the public. Such a requirement could be implemented rather easily by requiring members of FmHA's appeals staff to submit all administrative decisions to a centralized depository and to index appeals decisions by program and by specific FmHA regulations at issue in the appeal. Both the index and the decisions should then be made available to the public upon request.

D. FmHA Decisions Should Also Be Made Judicially Reviewable

We also urge the Committee to make all FmHA decisions judicially reviewable. Such legislation is necessary to overcome a recent court of appeals decision making FmHA decisions with respect to creditworthiness unreviewable. Woodsmall v. Lyng, 816 F.2d 1243 (8th Cir. 1987).

The courts' failure to review FmHA decisions with respect to creditworthiness gives FmHA unfettered discretion with respect to loan eligibility decisions and leaves applicants who believe that they were wrongly denied assistance without recourse. Neither result is desirable.

VI. MAKE EVICTIONS FROM FmHA RENTAL HOUSING SUBJECT TO THE GRIEVANCE AND APPEALS PROCEDURE

In response to the passage of Section 510(g) in 1979, FmHA adopted a tenant grievance and appeals procedure that, among other things, required FmHA landlords to provide tenants with an administrative hearing prior to an eviction. Notwithstanding clear evidence that such hearings were effective in resolving landlord-tenant disputes, the Reagan Administration proposed to exclude evictions from the grievance and appeals procedure shortly after it took office and succeeded in doing so in December of 1983. 48 Fed. Reg. 56,139 (Dec. 19, 1983). As a consequence, FmHA evictions are now handled in state courts which often deny tenants rudimentary rights, such as the right to discover evidence and to have a written decision.

Because state courts that handle ordinary evictions are not required to deal with federal constitutional and statutory rights, such as the right not to be evicted without good cause, they are often unwilling to recognize those rights with respect to tenants of federally subsidized housing. Moreover, the summary nature of state court proceedings so favors landlords that tenants, who for the most part are unrepresented, do not contest most evictions.

Despite substantial evidence that Congress intended tenants in FmHA housing to have an administrative hearing prior to eviction,[1] tenants' attempts to overturn the FmHA regulations on statutory grounds have been unsuccessful. While there is a reasonable likelihood that tenants may prevail in an effort to overturn the 1983 regulations on procedural grounds, there is nothing that prevents FmHA from promulgating new regulations that again exclude evictions from the grievance process. Consequently, there is a need to amend Section 510(g) to clarify that Congress intended tenants in FmHA housing to have the right to an administrative hearing prior to an eviction. Subjecting evictions from FmHA rental housing to the FmHA grievance and appeals process would restore to tenants the rights that Congress intended to vest them with in 1979, and would place FmHA tenants on an equal footing with HUD public housing tenants.

VII. FmHA SHOULD BE REQUIRED TO FOLLOW STATE FORECLOSURE PROCEDURE

The Project urges the Committee to enact legislation similar to that contained in Section 442 of H.R.1180 which require FmHA to follow state foreclosure procedure when such procedure is more favorable to the borrower than the foreclosure procedure that FmHA would otherwise follow. Our support for this provision stems from FmHA's recent steadfast refusal to follow Pennsylvania foreclosure law requiring lenders in that state to advise all borrowers facing foreclosure of the availability of a state-sponsored mortgage relief program and requiring foreclosure to be delayed until borrowers have had an opportunity to apply for that relief.

VIII. MODIFICATION IN THE FmHA MORATORIUM AND INTEREST CREDIT PROGRAMS

Finally, we urge the Committee to adopt legislation that would require FmHA to alter the way it administers the interest credit and moratorium programs. In both instances, which are described in greater detail below, FmHA is administering the programs in a restrictive manner that denies borrowers assistance they should be receiving and increases the likelihood of their default.

A. Require FmHA to Provide Eligible Borrowers with Retroactive Interest Credit Where FmHA, for Administrative Reasons, Postpones Granting the Assistance

Existing FmHA regulations preclude an applicant who has suffered a loss of income from obtaining additional interest credit assistance whenever (1) the loss of income occurred during the last three months of the borrower's interest credit agreement with FmHA (7 C.F.R. § 1944.34(i)(3)(ii) (1988)); or (2) the loss of income was due to a separation and the borrower has either not commenced a legal separation or divorce proceeding or the borrower has been separated from his or her spouse for a period of at least six months. See 7 C.F.R. §§ 1944.5(d)(11) and 1944.34(f)(iv)(5).

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[1] See Housing and Urban Rural Recovery Act of 1983, H.R. REP. NO. 123, 98th Cong., 1st Sess. 62-63 (1983). "The Committee intent is that aggrieved borrowers, applicants and tenants in housing assisted by FmHA be afforded a meaningful administrative procedure which comports with basic safeguards of due process." Id. at 63.

In both cases, the reason FmHA refuses to make assistance available is purely administrative. In the first case FmHA does not want to revise an interest credit agreement when it is about to enter into a new agreement, while in the second case FmHA is fearful that any separation of less than six months where no legal proceedings having been started may not be permanent and, once FmHA has increased the borrower's interest credit subsidy, the borrower may resume living with his or her spouse without advising FmHA of the change in circumstances, thereby providing the borrower with unauthorized assistance.

While FmHA's reasoning for not modifying interest credit agreements under the above circumstance has some merit, the agency's administrative and fiscal needs can be met without depriving borrowers of interest credit assistance. All that FmHA need do is grant borrowers retroactive interest credit assistance at the time it would normally revise the interest credit agreement. Thus, in the case where a borrower seeks additional assistance during the last three months of the agreement's term, FmHA, as part of the new interest credit agreement, would extend retroactive interest credit assistance from the date the borrower first applied for the assistance. Similarly, in response to a separation, when FmHA revises an interest credit agreement at the end of a six-month "waiting period," the agency would extend assistance retroactively to the time that the borrower first requested the assistance.

B. Eliminate the 30-Percent-Loss-of-Income Requirements for Both the Moratorium and Interest Credit Programs

In order for its borrowers to obtain additional interest credit (i.e., modification of an interest credit agreement during the term of the agreement) or a moratorium on payments due to a reduction in household income, FmHA requires them to have incurred a reduction in gross income of at least 30 percent. 7 C.F.R. §§ 1934.34(i)(3)(ii) and 1951.313(b)(1)(i) (1988).

Thus, for example, a family with a gross income of $12,000 will not qualify either for additional interest credit assistance during the term of an agreement or for a moratorium unless its income was reduced by $3,600 to $8,400. It is hardly conceivable that a family with an income of $12,000 could sustain a reduction in income of $3,600 without substantially impairing its ability to meet its mortgage payments. Yet FmHA refuses to provide such a family with any assistance.

With respect to the interest credit program, the existing requirement is onerous and should be eliminated. With respect to the moratorium program, the requirement is both onerous and illegal. Section 505 of the Act obligates FmHA to extend moratorium relief to an individual borrower "upon a showing by the borrower that, due to circumstances beyond his control, he is unable to continue making payments of such principal and interest when due without unduly impairing his standard of living." Clearly the statute contemplates that decisions with respect to moratorium relief be individualized and FmHA's establishment of a 30-percent threshold is contrary to that requirement. (It is interesting to note that FmHA places no threshold on requests for a moratorium when the borrowers' need for a it is based on increased expenses, as opposed to a reduction in income. In those cases, as well as in instances where the borrower meets the 30-percent reduction test, FmHA uses a family budget to determine whether a borrower's standard of living is unduly impaired. Thus a borrower may qualify for a moratorium for almost any level of increased expenses but must suffer at least a 30-percent reduction in income to qualify for relief due to an income decrease.)

Since FmHA refuses to eliminate these requirements, and since its adherence to these regulations increases the number of defaults in the Section 502 program, the Committee should adopt legislation that would require FmHA to change its regulations.

Mr. Chairman, we appreciate the opportunity to present this statement. Our staff is available to answer any questions that you, other members or staff of the Committee may have and to assist in drafting the legislative changes that we have recommended.

THE NAVAJO NATION

LEONARD HASKIE
INTERIM CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

IRVING BILLY
INTERIM VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

July 07, 1989

The Honorable Alan Cranston, Chairman
Subcommittee on Housing and Urban Affairs
Committee on Banking, Housing, and Urban Affairs
SD-535 Dirksen Senate Office Building
Washington, D.C. 22510

Dear Mr. Chairman:

On behalf of the Navajo Nation, I would like to thank you and the other members of the Subcommittee for the opportunity to comment on S.566, the National Affordable Housing Act. In addition, I wish to thank you for the compassion and concern for Native Americans which you have demonstrated over the years, including your leadership role in the Indian Housing Acot of 1988.

Few issues affect the daily lives and the future of the Navajo people as profoundly as housing - and few needs of the Navajo people are as acute as our housing needs. The authorizations for appropriations provided in S.566 are insufficient to address the desperate needs for Indian housing in general and the need for Navajo housing in particular.

The need for housing within the Navajo Nation cannot be overstated. Although within the United States there is one dwelling unit for every three people, in the Navajo Nation, there is only one modern dwelling unit for every twenty people and the condition of these existing units is deteriorating.

According to the latest housing inventory conducted by the Navajo Housing Services Department, there is an immediate and critical need to construct 19,062 new units within the Navajo Nation. In addition, 16,888 of the existing housing units are so substandard as to be nearly uninhabitable and another 10,242 units are in urgent need of substantial rehabilitation. I have attached a chart summarizing the findings of the Navajo housing inventory for your review. Behind these alarming

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statistics are the 12,416 families without homes and thousands of other families who suffer daily under deteriorating conditions.

Despite the need for Navajo housing which now stands at an all time high, federal funds for Indian housing have been cut by 80 percent over the past eight years. S.566 provides an opportunity to revitalize the federal government's commitment to provide decent housing to Native Americans. However, in order to accomplish this task, the authorization within the National Affordable Housing Act must be increased from its proposed level of 1,250 units. Additional authorizations provideing 6,000 new units per year are essential to address this growing problem and fulfill the objectives of the National Housing Goal which proposes that, "[E]very American family be able to afford a decent home in a suitable living environment."

In addition, the National Affordable Housing Act should be designed to permit some flexibility for Indian Tribes to design housing programs that will resolve thier unique housing needs. Only through increased funding and increased flexibility will we begin to address the crisis in Indian housing. I therefore urge the Subcommittee to report as quickly as possible this legislation with appropriate amendments.

If you need additional information regarding this issue, please feel free to call the Navajo Nation Office in Washington, D.C. at 775-0393.

Sincerely,

Leonard Haskie, Interim Chairman
NAVAJO TRIBAL COUNCIL